

2498

No. 11748

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

WILLIAM A. CARMICHAEL, District Director,
United States Department of Justice, Immigration
and Naturalization Service, District No. 16,

Appellant,

vs.

JOHN DELANEY,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

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PAUL P. O'BRIEN. CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the District Court of the United States
Southern District of California
Central Division

No. 4591-O'C

In the Matter of the Application of
JOHN DELANEY
For a Writ of Habeas Corpus.

PETITION FOR A WRIT OF HABEAS CORPUS

To the Honorable District Court of the United States.

This petition respectfully recites:

I.

That John Delaney, is detained, confined and restrained of his liberty by the Department of Justice, Immigration and Naturalization Service, at Terminal Island, Los Angeles, California.

II.

That said detention, confinement and restraint are illegal and consist of the following: That petitioner herein is a citizen of the United States of America, born on or about the 14th day of November, 1898 at Brooklyn New York, N. Y.

III.

Your petitioners father was Michael Delaney and his mother Bridget Whalen, who were married at Philadelphia, Penn. United States of America, on October 22, 1896 and were issued marriage certificate Number 88343. [2]

IV.

Your petitioner is informed that his mother died at Brooklyn, N. Y. shortly after the birth of your petitioner herein.

V.

That on the 6th day of March, 1944, petitioner was commissioned a Lt. in the United States, Navy, Maritime Service and issued certificate Number 4433-00243 and on the 6th day of June, 1944, petitioner departed from the United States, aboard the U. S. S. Schenectady, for overseas duty, that he served aboard ship in Pacific Combat waters, delivering supplies and transporting troops continuously and away from the Continental United States, from said 6th day of June, 1944 until the return of said ship to the Port of San Pedro on the 20th day of May, 1945 and entered the United States at said Port on said date.

VI.

On the 21st day of May, 1945, your affiant was taken into custody by the Immigration and Naturalization Service and has been continuously detained in custody since said time.

VII.

That your affiant is informed, believes and therefore alleges: That said Immigration and Naturalization Service has detained him and confined him of his liberty for the reason and in the belief that petitioner herein is an alien of the United States and of Irish citizenship and Nationality.

VIII.

Your petitioner further alleges that he registered in 1941 as an American citizen under the Selective Service, Proclamation of the President of the United States and is a member of the Long Beach Board, registered as an American citizen.

IX.

Petitioner further alleges that he was issued certificate Number 601693, by the United States Coast Guard at San Pedro, Califor- [3] nia, dated December 27, 1943, as a citizen of the United States, place of birth designated N. Y. United States of America.

X.

That he has served aboard ships of the United States of America since the year 1917, that he has been a resident of Southern California since the year 19 and was registered in the United States Selective Service Draft for the year 1917.

XI.

That said Immigration and Naturalization Service has on numerous occasions during his incarceration authorized his release on Bond in the sum of five Hundred (\$500.00) Dollars, pending investigation and determination by a board of special inquiry, respecting his entry and citizenship and did on or about the 28th day of June, 1945, permit him in custody of a member of said service to proceed to the offices of the Company with which he was employed at Wilmington, California, to secure sufficient sums from his earnings to deposit said Bond in the

sum of Five Hundred (\$500.00) Dollars. Petitioner herein secured sufficient sums to deposit as a Bond and while in the process of preparation of said Bond capriciously and arbitrarily refused to accept said Bond for his release.

XII.

That John Delaney, is not held by virtue of any complaint indictment, warrant or quarantine law, rule or regulation except as specifically set out and no other application for a Writ has been made on his behalf.

XIII.

Your petitioner has loyally and faithfully served his Country the United States of America as a Lieutenant in the United States Navy Maritime Service. Has been employed aboard Ships of the Maritime Service of the United States on occasions since the year 1917, and during the 1st World War. Has been in actual combat and on duty in the war zones of the Pacific for the past year. That said Immi- [4] gration Service took your affiant in custody the day following his arrival in the United States and has so detained him in custody since said time and have advised him that they intend to continue to keep him in custody until such time as necessary to a complete investigation of his status, claim to citizenship and right to enter requiring communication, inquiry and search in foreign Countries and in different States of the United States, which time is indefinite, uncertain and problematical.

XIV.

That by reason of the foregoing the detention of your affiant is illegal. That he is entitled to a Judicial determination of his United States Citizenship and to be admitted to a reasonable bail pending such inquiry, investigation or Judicial determination.

XV.

That the action of the Immigration Service has been capricious, unfair and arbitrary.

XVI.

That petitioners health is being materially affected by his continued incarceration he has lost a great amount of weight, is very nervous, worried and aggravated and unable to transact, manage or carry on his business and affairs.

Wherefore it is prayed that a Writ of Habeas Corpus, may be granted directed to the Department of Justice Immigration and Naturalization Service, commanding them to have the said John Delaney, before said Court to do and receive what shall then and there be considered by said Court concerning his restraint; that he be restored to his liberty and pending the hearing of said Writ that he be restored to his liberty on reasonable bail.

Dated: This 2nd day of July, 1945.

DAVID C. MARCUS

Attorney for John Delaney

[Endorsed]: Filed Jul. 3, 1945. Edmund L. Smith, Clerk. [5]

[Title of District Court and Cause]

RETURN TO WRIT OF HABEAS CORPUS

I, Albert Del Guercio, District Director, United States Department of Justice, Immigration and Naturalization Service, Los Angeles, California, District No. 16, Respondent herein, for my return to writ of habeas corpus issued in the above case, state:

I.

That John Delaney, hereinafter referred to as the Petitioner, is not being illegally restrained by me of his liberty but is in my custody under proper and lawful authority.

II.

The Petitioner arrived at the Port of San Pedro, California, on May 20, 1945, from a foreign country as a member of the crew of the vessel "Schenectady" serving in the capacity of Second Assistant Engineer. The crew of the vessel was, upon its arrival, inspected by an Immigrant Inspector of the United States Immigration and Naturalization Service. The Petitioner claimed United States citizenship by birth in Brooklyn, New York. The said [6] Immigrant Inspector was in possession of information that the Petitioner had registered under the Alien Registration Act as an alien, claiming birth in Cork, Ireland, and that he had first arrived in the United States on November 14, 1924. The said Immigrant Inspector on May 20, 1945, in accordance with law, served upon the Master of the vessel "Schenectady" notice to deliver the Petitioner to the office of the Immigration and Naturalization Service at Terminal Island for further examination. A copy of the said notice is attached hereto as a part of this return and marked exhibit "A".

III.

On May 21, 1945, further examination was accorded the Petitioner as provided by law, before a Board of Special Inquiry composed of three duly appointed Immigrant Inspectors, one of whom acted as Chairman. A full stenographic record of the examination before the said Board of Special Inquiry was made as required by law. There is attached hereto as a part of this return and marked exhibit "B" a copy of the stenographic report of the hearing before the Board of Special Inquiry on May 21, 1945 and subsequent dates, consisting of fifty-three pages of transcript and twelve exhibits.

IV.

The hearing before the Board of Special Inquiry is at present in a pending status awaiting the outcome of certain further investigation.

Wherefore, I, Albert Del Guercio, District Director, United States Department of Justice, Immigration and Naturalization Service, District No. 16, pray that said writ of habeas corpus be dismissed and that the Petitioner be remanded to my custody.

ALBERT DEL GURCIO

District Director

United States Department of Justice
Immigration and Naturalization Service
District No. 16 [7]

[Verified.] [8]

Exhibit "A"

Form I-259

(Old 559)

Notice to Deliver, Detain on Board, or Remove Aliens

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Port of San Pedro, Calif. 5-20, 1945

To the Owner, Agent, Consignee, Master or Officer in
Charge of the SS. Schenectady.
Deconhill Shipping Line.

Pursuant to the provisions of the Acts of February 5,
1917, December 26, 1920, and May 26, 1924, and the
Immigration Regulations issued by the Attorney General
thereunder, you are hereby directed to deliver to

Erase two)	
deliver to)	
detain on board)	Immigration Station
)	†(Place of delivery or detention)
remove to)	Terminal Island

the following-named aliens, with their baggage, your at-
tention being invited to the appropriate sections of the
statutes appearing on the reverse side hereof, and regu-
lations made thereunder:

Name	Status on Vessel
	(1st, 2d, 3d, or tourist class passenger; member of the crew; stowaway, etc.)
John Delaney, age 45	
2nd Asst. Engineer	

Deliver to Immigration Station,
Terminal Island, Calif. for
further examination

By direction of the Immigration and Naturalization
Officer in Charge.

/s/ F. E. Eldridge
U. S. Immigrant Inspector

Receipt of the above notice is hereby acknowledged.
May 20, 1945, at 10:15 AM.

/s/ W. G. Friar
(Signature)

Master

(Title of person signing receipt)

(Over)

16—18927

Copy

[Endorsed]: Filed Jul. 7, 1945. Edmund L. Smith,
Clerk. [9]

[Title of District Court and Cause]

TRAVERSE

Comes now the Petitioner above named John Delaney and traverses the return to Petitioners Writ of Habeas Corpus on file herein and admits, denies and alleges as follows:

On the Return to Writ of Habeas Corpus:

I.

Denies generally and specifically all of the allegations with respect to paragraph I.

II.

Denies that Petitioner arrived at the Port of San Pedro, California on May 20, 1945, from a foreign Country as a member of the crew of the vessel "Schenectady" serving in the capacity of second assistant engineer. Denies that your Petitioner at said time was inspected by an Immigration Inspector of the United States Immigration and Naturalization Service.

III.

On information and belief denies that an Immigration [10] Inspector on May 20, 1945 in accordance with law, served upon the master of the vessel "Schenectady" notice to deliver the petitioner to the Office of the Immigration and Naturalization Service at Terminal Island for further examination.

IV.

Denies that on May 21, 1945, further examination was accorded petitioner as provided by law before a Board of Special Inquiry.

To the Supplemental Return to Writ of Habeas Corpus and With Respect to Exhibit C.—Attached Thereto Petitioner Alleges:

I.

Re-affirms and re-alleges all of the allegations of petitioners petition for Writ of Habeas Corpus.

II.

Alleges that all hearings before the Board of Special Inquiry were erroneous, illegal and in violation of petitioners constitutional rights as guaranteed by the Vth and XIV amendment to the Constitution of the United States, unfair and arbitrary.

III.

That the Findings, Conclusions and order of the Board of Special Inquiry, the Commissioner of Immigration and Naturalization and Board of Immigration Appeals, is not sustained by the evidence; contrary to the evidence and founded upon hearsay ex-parte statements of witnesses not under oath, introduced in evidence without the right of cross-examination, founded upon hearsay, resulting in a miscarriage of lawful and Constitutional Procedure.

IV.

That Petitioner was born in the United States at New York City on the 14th day of November, 1897, to M. Delany and Bridget Whalen, who were married at Philadelphia, Pennsylvania, on the 22nd day of October 1896. Petitioners mother died at childbirth, his father [11] remarried and when petitioner was two years of age went to

Ireland, with his father and stepmother, subsequently when petitioner was about 16 or 17 years of age he returned to the United States. That in the year 1942, petitioner entered the United States Maritime Service and in the year 1943 became a Lieutenant, in the United States Naval Reserve, petitioner served on the U.S.S. Le Golia, for 8 months, during the year 1942; aboard the USAHS Republic for 6 months during the year 1943. As a Lieutenant in the United States Naval Reserve petitioner was under command and orders from the United States Navy and on or about the 6th day of May 1944, was ordered by his superior officers to ship as a Lieutenant aboard the S. S. Schenectady an oil, armed tanker attached to the United States Fleet, in Asiatic Waters, petitioner served aboard said vessel supplying oil to the United States Navy, continuously until the 20th day of May, 1945, when said ship returned to the United States and docked in San Pedro, California. Petitioner entered the United States on said date, remained in Long Beach, California on said 20th day of May, 1945 and resumed his abode at said place on said date and was advised on the 21st day of May, 1945, to report to the Immigration Office at San Pedro. Petitioner took an oath of allegiance to the Armed Forces and the Government of the United States, when inducted as a Lieutenant in the United States Naval Reserve, was engaged in combat on the Marshall Islands and Ulithy engagement, was at all times aboard a United States vessel, under command and orders from the Commander of the Asiatic Fleet, at no time voluntarily departed from the United States, but during all times while in service of the United States Maritime Service and the United States Naval Reserve, was under orders and did ship aboard United States vessels pursuant to such orders and commands.

V.

That by reason of the foregoing the Board of Special Inquiry is barred and denied authority from excluding petitioner from the United States and that such order is without right, illegal, void [12] and erroneous. Petitioner having entered the Continental United States on May 20th, 1945, to resume his permanent residence therein the actions, procedure and process of said Immigration Department in convening a Board of Special Inquiry to debar and exclude petitioner from the Continental United States, was illegal, void and without constitutional and legal authority and established procedure to so do, and said excluding order without authority, illegal, void and without constitutional and jurisdictional authority so to do.

VI.

The following Findings of Fact and Conclusions of Law of the Board of Special Inquiry, affirmed on appeal are not sustained by the evidence, contrary to evidence, and law arbitrary and unfair.

“Findings of Fact: Upon the basis of all the adduced, it is found:

1. That the appellant is an alien, a native of Ireland and a subject of Great Britain;
2. That the appellant has never been lawfully admitted to the United States for permanent residence;
3. That the appellant last arrived in the United States at San Pedro, California, on May 20, 1945, as a member of the crew of the SS ‘Schnectady.’ ”

“Conclusions of Law: Upon the basis of the foregoing findings of fact, it is concluded:

1. That under Section 13(a) of the Act of May 26, 1924, the appellant is inadmissible to the United States as an immigrant not in possession of [13] an unexpired immigration visa;
2. That under the Passport Act approved May 22, 1918, as amended, and Executive Order No. 8766, the appellant is inadmissible to the United States as an immigrant not in possession of an unexpired passport."

VII.

The legal, proper and authorized procedure was not in excluding proceedings which barred the right of petitioner to representation of counsel after petitioner had at all times served and shipped aboard American vessels of the United States Navy but by deportation proceedings which authorized by constitutional and legal authority the right of petitioner to representation by counsel. The service by petitioner aboard United States Armed vessels of the United States Navy under command and orders of personnel of the United States Navy and his return to the United States on May 20, 1945 did not constitute an entry into the United States, within the meaning of Section 166, Title 8 of the United States Code Annotated.

Wherefore petitioner prays that the Writ of Habeas Corpus be granted and the petitioner discharged.

DAVID C. MARCUS

Attorney for Petitioner [14]

[Verified.] [15]

Received copy of the within traverse this 28 day of Dec., 1946. James M. Carter, U. S. Atty.

[Endorsed]: Filed Dec. 28, 1946. Edmund L. Smith, Clerk. [16]

[Title of District Court and Cause]

OPINION OF THE COURT GRANTING WRIT OF
HABEAS CORPUS

David C. Marcus, of Los Angeles, California, Attorney for the Petitioner;

James M. Carter, United States Attorney, and Robert Wright, Assistant U. S. Attorney, and Bruce G. Barber, Chief, Adjudications Division, U. S. Immigration and Naturalization Service, of Los Angeles, California, for respondent.

J. F. T. O'Connor, District Judge.

Introductory Statement:

John Delaney, also known as John Joseph Delaney, through his counsel, David Marcus, Esq., filed in this court on July 3rd, 1945, his petition for a writ of habeas corpus alleging:

(1) That he was detained, confined and restrained of his liberty, illegally, by the Department of Justice, Immigration [17] and Naturalization Service, at Terminal Island, Los Angeles, California, District No. 16; and

(2) That he was a native-born American citizen born on or about the 14th day of November, 1898, at Brooklyn, New York. The petition for the writ of habeas corpus was granted, and made returnable in this court on July 9th, 1945.

The United States Department of Justice, Immigration and Naturalization Service, Los Angeles, California, District No. 16, respondent herein, through Albert Del Guercio, District Director, filed its return thereto, on July

7th, 1945, denying these allegations, to which there was a traverse, filed by petitioner on December 28th, 1946, to said return, and to a supplemental return filed by respondent on December 20th, 1946. There was a hearing in court thereon, and thereupon the matter was taken under submission on briefs to be filed, which briefs have been filed and duly considered by the court.

Two Issues in Case:

This is an exclusion proceeding, as distinguished from a deportation proceeding(1); and there are just two issues involved herein; namely

(1) When the petitioner, John Delaney, arrived at the Port of San Pedro, California, on May 20th, 1945, from a foreign country, namely Australia and other foreign ports, as a member of the crew of the vessel "Schenectady," a vessel in the Maritime Service of the United States, serving in [18] the capacity of second assistant

(1) Exclusion proceeding: "Any alien seaman who shall land in a port of the United States contrary to the provisions of this subchapter shall be deemed to be unlawfully in the United States, and shall at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation provided in section 156 of this title (Feb. 5, 1917, c. 29, 34, 39 Stat. 896; May 6, 1924, c. 190, 19, 43 Stat. 165.)

engineer(2) did he, as a matter of law, make an entry (or reentry) into the United States as that word is defined in Sec. 19 (a) of the Immigration Act of February 5th, 1917(3), assuming that he was an alien at that time; and

(2) Was John Delaney at that time an American citizen by *jus soli*, in fact and in law, or an alien immigrant not in possession of a valid immigration visa, as required by the Immigration Act of May 26th, 1924, the Alien Registration Act of 1940, and Executive Order No. 8766.

There is no dispute about the fact that the SS. "Schenectady" went to Australia, the Persian Gulf, New Zea-

(2) The departure crew list on file with the Service covering the departure of the "Schenectady" from the port of Los Angeles, California, on June 9th, 1944, describes the vessel as a tanker "owned and operated by Becon Hill Shipping Company, agents for War Shipping Administration", and that W. G. Friar is master of the said vessel. The crew list further recites that the vessel is bound foreign and lists among the "name of seamen", line 21, "John Delaney, capacity, Second Assistant Engineer." The War Shipping Administration was created by Executive Order of February 7, 1942, No. 9054 (7 F. R. No. 28837, February 10, 1942; pursuant to the Act of June 6, 1941, c. 174, 55 Stat. 242, 50 USCA Appendix, Sec. 1271) and had transferred to it certain functions and duties of the United States Maritime Commission (Gov. Brief page two)

As a second engineer in the American Merchant Marine, John Delaney stated he held a reserve commission as a Lieutenant in the United States Navy (from page 76 of the reopened hearing, dated September 18th, 1946)

(3) Sec. 19 (a) of the Immigration Act of February 5th, 1917, 39 Stat. 889, (8 U. S. C. A., Sec. 115 (a)): *** Any alien who is hereafter sentenced to imprisonment for a term of one year or more because of a conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States *** shall, upon the warrant of the Attorney General, be taken into custody and deported. * * * In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final."

land, Philippine Islands and the Marshall Islands, and was in Curacao, Dutch West Indies and then went back through the Panama Canal to the Marshall and the Admiralty Islands and Ulithi, Caroline Islands, and returned to San Pedro and arrived therein [19] on May 20th, 1945; and that John Delaney was in battle engagements in the Marshall Islands and in Ulithi. The departure crew list (*supra*) lists John Delaney as a United States citizen and the purpose of the voyage of the SS. "Schenectady" was to supply oil to the United States Navy(4).

John Delaney testified at the hearing on his application for the writ of habeas corpus that, prior to this voyage, he took an oath of allegiance to the United States, in 1943, in joining the United States Maritime Service; that, while in the service of the United States Maritime Service, he was paid by the United States government; that his checks came from the United States Treasurer in Washington, D. C., during his entire service with the United States Maritime Service extending about a year and six months; that he did not make any voluntary trips from the United States; that the United States Coast Guard assigned him to the SS. "Schenectady" as engineer; that the Coast Guard was a part of the United States Navy; that the orders to go to sea came from the United States Coast Guard; and that the penalty for

(4) Lieutenant John Delaney was awarded the Atlantic War Zone Bar, the Mediterranean Middle East War Zone Bar, and the Pacific War Zone bar, confirming active service with the United States Merchant Marine in those war areas; as well as the Merchant Marine Combat Bar confirming active service with the United States Merchant Marine in a ship which was engaged in direct enemy action. (Petitioner's Exhibit No. 6)

refusing to obey orders, in time of war, would be court martial(5).

John Delaney further stated that, when the SS. "Sche-nectady" departed from the United States on June 10th, 1944, he intended to return to the United States, and that he remained [20] on this vessel from June 9th, 1944, to May 20th, 1945. The court understands him to mean that he was not transferred to another vessel in the interim; and, while there is apparently no evidence in the record that John Delaney disembarked at any of these foreign ports, the court will assume that he did at every opportunity, although whether he did, or did not, would be immaterial for the purpose of this opinion, on the authority of U. S. ex rel. Roovers v. Kessler, 90 F. (2d) 327(6).

(5) The court will judicially notice that the functions of the War Shipping Administration were not a part of the powers and authority exercised by the United States Navy. Captain McKinney, Legal Officer, United States Naval Headquarters, Roosevelt Base, Terminal Island, advised that the United States Navy did not, during the present war, direct the departure of vessels operated under the authority of the War Shipping Administration, and that the Navy had no control or supervision over the personnel assigned to such vessels." (From Gov. brief p. 2)

(6) "After having been told by the immigration authorities at New Orleans (according to the testimony of the relator) that he would not alter his status if he shipped on a United States vessel and did not go ashore at any foreign port, he obtained employment as a seaman aboard the American steamship Santa Marta. In the course of the voyage the steamship touched at the foreign ports of Havana, Cuba, Cristobal, Canal Zone, and Puerto Cortez, Honduras. Relator testified that he did not go ashore at any port, and the Government offered no controverting testimony ... The court said:

"We find nothing of substance in any of these points. U. S. ex rel. Claussen v. Day, 279 U. S. 398, 49 S. Ct. 354, 73 L. Ed. 758 and U. S. ex rel. Stapf v. Corsi, 287 U. S. 129, 53 S. Ct. 40, 77 L. Ed. 215, settle it that appellant made a new entry, and that

Upon the return of the SS. "Schenectady" at the port of San Pedro, California, on May 20th, 1945, John Delaney, as a member of the crew(7) had no passport and could not prove [21] his citizenship, American or otherwise, to the satisfaction of the Immigration officers, and he was held for a Board of Special Inquiry to determine his nationality, although John Delaney had certain documentary evidence indicating his American nationality(8).

Exclusion Proceedings:

Although the Government has attached to its Return to Writ of Habeas Corpus exhibit A, which purports to be a copy of a directive to the owner, agent, Master, etc.

his time for remaining in the United States ran from it. Appellant did leave the United States on board a ship; he did on board that ship enter foreign ports and foreign territory; and he did, on board the same ship, reenter the United States. That he did not betake himself ashore is immaterial. United States v. Corsi, *supra*' (Italics supplied.) U. S. ex rel. Roovers v. Kessler, etc., 90 F. (2d) 327 U. S. C. A. 5th Cir., decided June 7th, 1937.

(7) The "Continuous Discharge Book, Department of Commerce, United States of America, No. 233972", in the name of John Delaney, records at page 4, line 2, that Mr. Delaney was engaged on June 6th, 1944, at San Pedro, in the rating of Second Assistant Engineer, showing the description of voyage as foreign, and date and place of discharge, May 23rd, 1945, San Pedro, signed by Master W. G. Friar, (From Gov. brief page 2.)

(8) There was introduced into evidence at the hearing before the court, as Pet. Ex. 2, an identification card issued to John Delaney on March 6th, 1944, by a Lieutenant in the U. S. M. S., showing that John Delaney was a lieutenant in the U. S. Maritime Service, War Shipping Administration Training Organization; as Pet. Ex. 3, a certificate releasing John Delaney from active duty as a lieutenant in the U. S. Maritime Service, on March 25th, 1944, at San Francisco, and placing him in an inactive status in the U. S. Maritime Service; and his Continuous Discharge Book, issued to him by the U. S. Merchant Marine at Los Angeles, California, showing his place of birth New York on November 14th, 1898 (Nationality U. S. A.) etc. Pet. Ex. 7.)

of the SS. "Schenectady" for the delivery of John Delaney to the Immigration Station at Terminal Island for further examination, receipt of which notice is purported to have been acknowledged by the Master, W. G. Friar, at 10:15 A. M., May 20th, 1945, John Delaney gave the court to understand that when the vessel reached San Pedro, California, and docked there on May 20th, 1945, he left the ship and went to his home in Long Beach, California, the same day, and stayed there all night(9); and the next day (May 21st, 1945) when he endeavored to return to the ship, he found it out in the harbor; and that upon [22] calling up the shipping office at San Pedro, where the ship was, he was informed that he was to report to the Immigration Station, that being the following day (May 21st, 1945) after his arrival in the United States at San Pedro, California, giving the court to understand that up to this time he was absolutely unaware of the fact that the Immigration authorities wanted him. On the basis of John Delaney's testimony, he had entered the United States without any interception whatsoever, and, if this be a fact, he certainly must have entered the United States or technically have made a landing. There is no evidence that he tried to avoid his interception, and it would seem to the court that deportation proceedings, rather than exclusion proceedings, would have been the proper proceedings, although the court is not passing on this point in these proceedings. He further stated that he went to the Immigration office while in uniform, and the

(9) Petitioner John Delaney contends that on May 20th, 1945, when said ship returned to the United States and docked in San Pedro, California, petitioner entered the United States and remained in Long Beach that day and all night, and was advised on May 21st, 1945, to report to the Immigration Office at San Pedro, hence that exclusion proceedings are too late.

Immigration official thereupon took him into, and kept him in, custody for six weeks without permitting him to communicate with anyone, until he was finally released on his application for a writ of habeas corpus, which his jailor at first refused to honor.

The Government, notwithstanding the fact that petitioner John Delaney was permitted to leave the vessel and remain at his home over night in Long Beach, California, takes the position that this proceeding is rightfully an exclusion proceeding, rather than a deportation proceeding, for the reason, obvious to the court, that in an exclusion proceeding involving the deportation of an alien for an unlawful entry, the burden is upon the alien to prove his citizenship (*U. S. ex rel. Polymeris et al. v. Trudell* (1932), 284 U. S. 279); whereas in a deportation proceeding, where citizenship is claimed, the burden of proof is upon the Government to prove alienage (*U. S. v. Siug Tuck, et al.* (1904), 194 U. S. 161. [23])

The Government, in support of its contention that exclusion proceedings were proper, cites Sec. 15 of the Act of February 5th, 1917, as amended (39 Stat. 885; 8 U. S. C. 151) providing in part as follows:

“Section 15. That upon the arrival at a port of the United States of any vessel bringing aliens it shall be the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens, or said immigration officials may order a temporary removal of such aliens for examination at a designated time and place, *but such temporary removal shall not be considered a landing . . .*” (Italics supplied.)

citing *U. S. v. Ju Toy*, 25 S. Ct. 644, 646, 198 U. S. 253, and *Nishimura Ekiu v. U. S.*, 12 S. Ct. 336, 339, 142 U. S. 651, 35 L. Ed. 1146, but the court, on the basis of John Delaney's statement, does not believe he is subject to this section; but will hold that exclusion proceedings in this case were proper to determine the questions involved.

Basis for Holding John Delaney for a Board of Special Inquiry:

The action in holding the applicant, John Delaney, for a Board of Special Inquiry was based upon a communication from Perry M. Oliver, Director of Administrative Services, General Office, dated September 25th, 1944(10); this communication being in effect an information sheet containing the data given by John Delaney at the time of his registration under the alien Registration Act of 1940, a copy of which has been made a part of the record of the Board of Special Inquiry, marked Ex. No. 2.

This Board of Special Inquiry denied the application of John Delaney for admission to the United States, and moved that he be excluded, on the grounds that (1) he is an alien immigrant not in possession of an unexpired immigration visa, as required by the Immigration Act of 1924, and the Alien [24] Registration Act of 1940, and Executive Order No. 8766; and (2) is not in possession of a passport or official document in the nature of a pass-

(10) John Delaney of 1761 East Broadway, Long Beach, Los Angeles, California, registered as an alien at Long Beach, California, on December 16, 1940, that he gave his date of birth as November 14, 1897, his place of birth at Cork, Ireland, his citizenship as British, his place of last entry into the United States as Wilmington, North Carolina, date of entry as November 14, 1924, means of entry as "Nehian."

port issued by the Government of the country to which he owes allegiance or other travel document showing his origin and identity as required by the Passport Act of May 22nd, 1918, as amended, and Executive Order No. 8766, informing the applicant that he had a right to appeal from the decision to the Attorney General (Board of Special Inquiry Report, page No. 28).

On January 4th, 1946, the Commissioner entered an order affirming the excluding decision of the Board of Special Inquiry, but the Board of Immigration Appeals ordered the hearing reopened on January 15, 1946, to obtain additional evidence.

On October 9th, 1946, the Board of Immigration Appeals affirmed the Commissioner's decision of October 4th, 1946; and, on November 5th, 1946, the Commissioner recommended that the decision of the Board of Immigration Appeals on October 9th, 1946, be not disturbed.

What Constitutes the Last Date of Entry of John Delaney Into the United States?

The petitioner, John Delaney, of course, takes the position that his last date of entry into the United States was on November 14th, 1924, when he arrived at Wilmington, North Caroline, on the SS. "Nehian"; while the Government contends that his last date of entry was on May 20th, 1945, when he entered the United States at San Pedro, California, on the SS. "Schenectady". The record shows that while John Delaney had previously been in the United States, he returned to the United States aboard the SS. "Nehian", a British ship, arriving at Wilmington, North Carolina, on November 14th, 1924, as a member of the crew, in which his nationality was given as British, his

Race Irish, and his age twenty eight, and the [25] court will assume such entry lawfully.

John Delaney stated that all of his employment, prior to 1924, while ashore in the United States, was mostly in the shipyards in and around New York; and that after his arrival at Wilmington, North Carolina, on November 14th, 1924, on the British SS. "Nehian", and up to the time of his departure from San Pedro, California, on June 10th, 1944, on the SS. "Schenectady", he had not left the United States in the interim for any foreign destination, and had worked in shipyards and laundries. The record is uncontradicted that he remained in this country, engaged in honest labor, was a man of good character, and had never been arrested.

The petitioner, John Delaney, takes the position, assuming that he was an alien at the time of his detention on May 21st, 1945, but not conceding this fact, that his last entry into the United States was on November 14th, 1924, on the British SS. "Nehian"; and that, as a matter of law, his arrival at the port of San Pedro, California, on May 20th, 1945, cannot be considered an entry in these exclusion proceedings under Sec. 19-A of the Immigration Act of February 5th, 1917, 39 Stat. 889 (8 U. S. C. A., Sec. 155(a), *supra*. But with this contention the court, assuming it would be necessary to find that John Delaney was an alien at the time of his last entry, cannot agree.

What Does, and Does Not, Constitute an Entry by an
Alien Into the United States:

Petitioner John Delaney, in the instant proceeding, places great reliance on *Ex parte Kogi Saito*, 18 Fed. (2d) 117 (decided by the District Court, W. D. Washington, N. D., on March 23rd, 1927; and on the case of

Matsutaka v. Carr, District Director of Immigration, 47 F. (2d) 601, CCA, 9th Circuit, decided on February 24th, 1931, to support his contention that he did not make a reentry into the United States at San Pedro, California, [26] on May 20th, 1945, as that word is defined in the statutes and case law under consideration, but the court finds that these two cases are not in point.

Sec. 120.3 of Title 8 of the Code of Federal Regulations provides:

“120.3. Arriving from any foreign port or place defined. ‘Arriving in the United States from any foreign port or place’ means arriving in ‘the United States and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone and the Philippine Islands’, *from any port or place in a foreign country . . .*” (Italics supplied.)

In the Kogi Saito case (*supra*) the Government contended that the petitioner, employed on American vessels sailing in British Columbia waters, reentered the United States on the return of the vessels, *but the record did not disclose that the petitioner had at any time left the vessel upon which he was employed as a cook.* (Italics supplied.) The court, in finding for the petitioner stated: “While departure by an alien from the United States, even though for a brief time, on re-entry, is subject to the Immigration Laws (Lewis v. Frick, 233 U. S. 291, 297, 34 S. Ct. 488, 58 L. Ed. 967; Lapina v. Williams, 232 U. S. 78, 31 S. Ct. 222, 54 L. Ed. 1204); this has no application to a member of a crew on an American ship on foreign waters.”

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In the above case just referred to, it is to be noted that no foreign port was touched.

In *U. S. ex rel. Claussen v. Day*, Commissioner of Immigration, 49 S. Ct. 354, 279 U. S. 398, 73 Law Ed. 758 (decided May 13th, 1929), the Court had for consideration specifically what constituted an entry into the United States under the Immigration Act, and ruled that:

“Section 1 provides that ‘United States’ as used in the Act shall be construed to mean the United States and any waters, territory or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone. An entry into the United States is not effected by embarking on an American vessel in a foreign port. [27] Such a vessel outside the United States whether on the high seas or in foreign waters is not a place included within the United States as defined by the Act.” See *Cunard SS. Co. v. Mellon*, 262 U. S. 100, 122; *Scharrenberg v. Dollar S. S. Co.*, 245 U. S. 122, 127. The word ‘entry’ by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country without having been in any foreign port or place. See Secs. 19, 32, 33, 35.

And it is clear that petitioner departed from the United States on the “*Elisha Atkins*” and that, when he landed at Boston on his return from South American and Cuban ports, he made an entry into the United States within the meaning of the Act.” . . .

(Syllabus 3: In order that there may be an entry within the meaning of the Act, there must be an arrival from some foreign port or place (id. 16 F. (2d) affirmed)).

In the case of *Matsutaka v. Carr*, 47 F. (2d) 601, decided by the Circuit Court of Appeals for the 9th Circuit on February 24th, 1931, relied upon by the petitioner, John Delaney, the question for decision was whether an alien seaman who had resided in the United States for a period barring his deportation for an illegal entry was entitled to reenter the United States upon his return from a fishing voyage in foreign waters as a member of the crew of an American fishing vessel. The court said:

“This question was answered in the affirmative by this court in *Weedin v. Banzo Okada*, 2 F. (2d) 321, and that decision has been generally followed by the District Courts of this Circuit. *Ex parte T. Nagata* (D. C.), 11 F. (2d) 178; *Ex parte Kogi Saito* (D. C.), 18 F. (2d) 116.” *The appellant shipped for a voyage from San Diego, Calif., to Mexican waters and return. No foreign port was named, and it is questionable, at least, whether any foreign port or place was in fact entered.* (Italics supplied.)

See also the case of *U. S. ex rel. Stapf v. Corsi*, 287 U. S. 129, decided on November 7th, 1932, which held that the relator's arrival into this country was an entry, notwithstanding he was a member of the crew of an American ship which had made a round trip voyage where he came from a place outside the United States, and from a foreign port or place, where the vessel had docked for two and one-half days, and there was no [28] indication that the alien had gone ashore, within the meaning of the

Immigration laws, citing *United States ex rel, Claussen v. Day*, 279 U. S. 398(11).

In the case of *Taguchi v. Carr, et al.*, decided by the Circuit Court of Appeals for the Ninth Circuit, on December 19th, 1932, 62 F. (2d) 307, which was a habeas corpus case, the appellant had entered into the United States unlawfully at Seattle on August 14th, 1918, and had remained continuously in this country until about July, 1931, when he signed on an American fishing boat at San Pedro, Calif., to engage in fishing on the high seas and in Mexican waters. The court:

“It appears that this vessel proceeded southward along the Mexican coast in the channel between Santa Margarita Island and the mainland for Mexico for the purpose of fishing . . . ‘That while on a fishing trip on this boat and during a heavy storm the fishing boat collided with another and sank off Santa Margarita Island, Lower California, Mexico; that in order to save the petitioner’s life the captain instructed him to land on said island, where he remained until the America tug boat Homer picked up the petitioner and brought him to San Pedro,

(11) The one case that seems to aid the petitioner, *Delaney, is Weedin v. Banzo Okada*, 2 Fed. (2d) 321, a case decided by the Circuit Court of Appeals for the Ninth Circuit on November 24th, 1924, which decision antedates the group of decisions under discussion, and which it would seem has been subsequently overruled by the Ninth Circuit. The Circuit Court at that time took the view that where a Chinaman, a member of the crew, was permitted by the captain to land for a few hours at the port of Sydney that the petitioner had not made a new entry into the United States. The decision in this case evidently hinged on the fact that the Government was dealing with a Chinaman, and that the captain of the vessel would have been under a penalty if he (the captain) had not returned the petitioner to this country.

California, arriving on or about the 27th day of September, 1931'.

"The Board of Special Inquiry at San Pedro, California, after hearing, denied appellant admission to the United States and held him subject to deportation. The specific grounds upon which appellant was denied admission are that 'he is an immigrant alien not having in his possession an unexpired immigration visa as required by the Immigration Act . . .

"The court went on to say: This situation might well appeal to us if we had any discretion in the matter, but we have none; and the sole question is whether or not appellant comes within [29] the provisions of the Immigration laws.

"Unfortunately, appellant was the author of his own misfortune. As a fisherman, he must have known the perils of the sea, and in making the voyage into foreign waters he knew that he might not be able to return to the United States. In fact, he testified at the hearing: 'I fully understood that touching any foreign land would make it difficult for me to return to the United States and it would be against the Immigration laws, but during a heavy storm our ship collided with another and sank off Santa Margarita Island, Lower California, Mexico. It was either life or death, and the captain instructed us to land on Santa Margarita Island, and everything would be all right. I have nothing else to offer.'

"Under the immigration laws and the interpretation placed thereon by the Supreme Court, we are compelled to hold that, notwithstanding the misfor-

tune which befell appellant, he was coming from a foreign country and therefore was subject to the immigration laws the same as though he had never resided in the United States. United States ex rel Leo Stapf, petitioner v. Edward Corsi, 287 U. S. 129, Commissioner of Immigration, 53 S. Ct. 40, 77 L. Ed....., decided by the Supreme Court November 7, 1932."

The Supreme Court of the United States, in U. S. ex rel. Volpe v. Smith, 289 U. S. 422, decided on May 22nd, 1933, had under consideration the specific question of what constituted an entry into the United States and said:

"The power of Congress to prescribe the terms and conditions upon which aliens may enter or remain in the United States is no longer open to serious question. Turner v. Williams, 194 U. S. 279; Low Wah Suey v. Backus, 225 U. S. 460, 468; Bugajevitz v. Adams, 228 U. S. 585, 591.

"That the second coming of an alien from a foreign country into the United States is an entry within the usual acceptation of that word is clear enough from Lewis v. Frick, 233 U. S. 291; Claussen v. Day, 279 U. S. 398."

The latest decision of the Circuit Court of Appeals for the Ninth Circuit is in the case of Albert Del Guercio District Director, appellant, vs. Jose Audon Salazar Delgadillo, No. 11225, decided January 22nd, 1947, 159 Fed. (2d) 130, in which case appellee, a citizen of Mexico was admitted to the United States for permanent residence in 1923, and continued to reside here until June, 1942. During that month he shipped as a member of the

crew of the American Ship "Andrew Jackson," then under the operational [30] control of the United States Government, through the War Shipping Administration. On July 12th, 1942, the "Andrew Jackson" was torpedoed by the enemy off the coast of Cuba. Appellee was rescued and taken to Cuba, where he remained one week. He was then flown to Miami, Florida, and admitted to the United States in transit by immigration officers for a period of not more than thirty days for the purpose of reshipping foreign from San Pedro, California. The Circuit Court held that his arrival at Miami, Florida, in July, 1942, after landing in Cuba, was an entry within Sec. 19 (a) of the Immigration Act and that he was subject to deportation for having been convicted of second degree robbery and sentenced to imprisonment from one year to life, within five years after this last entry into the United States.

The rulings of the foregoing authorities on what constitutes an entry or reentry by the Circuit Court, and by the Supreme Court of the United States, may be recapitulated as follows: Where there is a departure from the United States, even into foreign waters, and a return into the United States, without the vessel having touched at a foreign port, no entry exists on the part of an alien entering or reentering into the United States; but where a foreign port is touched, even though involuntarily on the part of the alien, a return into the United States constitutes an entry or a reentry, under Sec. 19 (a) of the Immigration Act of February 5th, 1917, 39 Stat. 889 (8 U. S. C. A. Sec. 155 (a) (which Section, by the way, was intended to protect this country from criminals) (*Volpe v. Smith*, 289 U. S. 422.)

John Delaney, even though he enlisted in the U. S. Merchant Marine from the highest of patriotic motives, was accepted as an American citizen by jus soli, on the documentary evidence that he had in his possession at the time he enlisted, was in the zones of combat, risked his life for his country, [31] and had no control over his destination in foreign territory, nevertheless, he must be held to have made a reentry into this country when he landed at San Pedro, California, on the SS. "Schenectady" on May 20th, 1945, as the word "entry" or "reentry" is defined in the Statute, as interpreted by the courts. It is just another example of an unjust law that should be changed by Congress, or re-examined by the courts.

Had the petitioner, John Delaney, been a slacker in the recent war, and remained in the United States, this question would not have arisen. The government he served and helped preserve now would deny him the right to remain in this country, or technically, would deny his reentry therein.

He was above the age of those called for actual combat; he could have secured non-combatant work in the United States. His error, if any, in the eyes of a highly technical construction of the law, was that he served during the war in an important branch of that great effort and did his bit to preserve our liberties.

Now our government, instead of commending him for patriotic service in the highest and best traditions of our history, would deny him the right to remain in this country. He registered for the draft; he claimed no exemption as many others did; ~~he, in all probability, could have engaged in non-combat work in the armed forces.~~

This court joins the judges of the Ninth Circuit in pointing out the harshness and injustice of the law. Circuit Judge Sawtelle, speaking for a unanimous court (Wilbur, Mack), in *re Taguchi vs. Carr*, *supra*, said:

“This situation might well appeal to us if we had any discretion in the matter, but we have none and the sole question is whether or not appellant comes within the provisions of the immigration laws.”

The vigorous dissent of Justice Murphy in *re Cleveland v. U. S.* (October Term, 1946) 329 U. S. 14 is worthy of note(12). [32]

While the decisions of the Ninth Circuit are binding on this court, and decisions of the Supreme Court binding on both the Circuit Court and this court, it is refreshing to find expressions such as we find from the pen of Justice Rutledge in the *Cleveland* case. It is the opinion of this court that the harshness, severity and injustice of

(12) (Dissent of Justice Murphy) “Yet this court in *Caminetti v. United States*, 242 U. S. 470, over the vigorous dissent of Justice McKenna in which Chief Justice White and Justice Clarke joined, closed its eyes to the obvious and interpreted the broad words of the statute without regard to the express wishes of Congress. I think the *Caminetti* case can be factually distinguished from the situation at hand since it did not deal with polygamy. But the principle of the *Caminetti* case is still with us today, the principle of interpreting and applying the White Slave Traffic Act in disregard of the specific problem with which Congress was concerned. I believe the issue should be met squarely and the *Caminetti* case overruled. It has been on the books for nearly 30 years and its age does not justify its continued existence. *Stare decisis* certainly does not require a court to perpetuate a wrong for which it was responsible, especially when no rights have accrued in reliance on the error. *CF. Helvering v. Hallock*, 309 U. S. 106, 121-22, Otherwise the error is accentuated; and individuals, whatever may be said of their morality, are fined and imprisoned contrary to the wishes of Congress. I shall not be a party to that process.”

several provisions of the immigration laws should be corrected by the higher courts or by Congress. This court has no power except to respectfully make the suggestion. Trial courts come in direct contact with many of these problems.

The court, up to this point, has assumed that John Delaney was an alien, but without having expressed its opinion as to his status.

Was John Delaney an American citizen by jus soli at the time of his arrival at San Pedro, California, on the SS. "Schenectedy" on May 20th, 1945?

This court has read with considerable care the proceedings had at San Pedro, California, before the Board of Special Inquiry, dated May 21st, 1945; May 22nd, 1945; May 23rd, 1945; May 28th, 1945; June 9th, 1945; June 22nd, 1945, and June 26th, 1945; and the proceedings before the reopened hearing at the same place on September 18th, 1946, together with the exhibits attached thereto, at which hearings John Delaney was examined by different examiners, to ascertain his status as an American [33] citizen, native born; and, while there are contradictory statements of John Delaney in the record, having in mind the conditions under which they were made, and the exigencies in which John Delaney found himself at the time, the Court feels that John Delaney has established his status as a native born American Citizen, having been born in Brooklyn, New York, on November 14th, 1898, and will so hold. The court is assuming that, because this is an exclusion proceeding, John Delaney has the burden of proof to establish this fact by a fair preponderance of the evidence.

Quaere: When John Delaney joined the United States Maritime Service, the United States Government accepted him as an American citizen, based upon his oath of allegiance to the United States and whatever documentary evidence of that fact he happened to have in his possession at that time, when it was known that he would be risking his life for his country; and, if the Government wished to dispute his American citizenship, why did it not do so at that time, instead of waiting until he arrived on the SS. "Schenectedy" at San Pedro, California, on May 20th, 1945?

John Delaney stated his father's name was Michael Delaney and that, according to his knowledge and belief, he (the father) was born in Cork County, Ireland; lived in the [34] United States many years, but did not know the dates; that his mother, Margaret Bridget Whalen, was born in Ireland and might have become a citizen of the United States. John Delaney stated that his father and mother were married in Philadelphia, Pennsylvania, that they later moved to Brooklyn, New York; that he was a week old when his mother died in Brooklyn, New York; that his father later married his stepmother, Mary Grady Delaney; that his father later returned to Ireland and died there when he (John Delaney) was about eighteen or nineteen years of age; and that his stepmother, Mary Grady Delaney, took him to Ireland when he was about two or three years' old.

The strongest written evidence in the case to support this contention of John Delaney's birth in the United States is the certificate of marriage of his parents, a certified copy of which is in evidence as petitioner's Exhibit No. 1, showing that M. Delaney and Bridget Whalen were married in Philadelphia on October 22nd, 1896.

According to John Delaney's delayed birth certificate, John Delaney represents himself as having been born at Brooklyn, New York, on November 14th, 1898, or a little over two years after his parent's marriage, which delayed birth certificate represents his father to be Michael John Delaney, and his mother to be Mary Grady, rather than Margaret Bridget Whalen, his natural mother. While the respondent herein doubts that the names appearing on the marriage license, exhibit 1, are the names of his natural parents, nevertheless, it seems to the court that John Delaney must have received information from some original source that his parents had been married in Philadelphia on or about the date indicated, for, if such had not been the case, he would have been writing to every Bureau of Vital Statistics in the country to have obtained such a certificate with the name of Delaney thereon. [35]

Hearsay Evidence Admissible to Prove Pedigree:

John Delaney further stated that his father had told him that he (John Delaney) had been born in America and that he (John Delaney) had been brought to Ireland by his stepmother after he (the father) had returned to Ireland (page 31 of the record of the hearing before the Board of Special Inquiry). While this statement on the part of John Delaney may be hearsay and a self-serving declaration, nevertheless, under one of the exceptions to the hearsay rule of evidence, it is admissible for whatever weight the court may desire to give to it.

Under Sec. 1870 of the Code of Civil Procedure of the State of California, and in conformity with the provisions therein, sec. 4, evidence may be given upon a trial of the following facts:

“The act or declaration, verbal or written, of a deceased person in respect to the relationship, birth,

marriage or death of any person related by blood or marriage to such deceased person”

subject, of course, to being disproved by the opposing side. This the Immigration and Naturalization Service has not done to the satisfaction of the court. See also Sec. 312 (316) of Jones on evidence civil cases (second edition)(13). [36]

“The testimony of a father, that his children were born in California, puts the question of their citizenship beyond cavil.” *Thompson v. Spray*, 72 Cal. 528, 14 P. 182.

“Evidence that a certain person was born in New York, was taken at a tender age to Ireland, and then returned to this country, justifies the court in finding him to be a citizen, despite the fact that, believing himself to be an alien, he had filed a declaration of intention to become a citizen.” *Golden Fleece Gold etc. Min. Co. v. Cable Cons. Gold, etc. Min. Co.*, 12 Nev. 312 (11 C. J. p. 787—Note A.) The court feels that, regardless of who has the burden of proof to prove citizenship and/or alienage,

(13) Sec. 312 (316) of Jones on evidence civil cases (2nd Ed.) “Declarations as to pedigree—reason for the exception (to the hearsay rule). The well known exception to the general rule excluding hearsay, under which certain declarations of deceased persons may be admitted in cases of pedigree, rests in part on the supposed necessity of receiving such evidence to avoid a failure of justice, and in part on the ground that individuals are generally supposed to know and to be interested in those facts of family history about which they converse, and that they are generally under little temptation to state untruths in respect to such matters which might be readily exposed . . . The declarations of deceased persons may be received, subject to the qualifications hereafter named, when such declarations refer to the age, relationship, birth, marriage, death or legitimacy of persons legally related by blood or marriage to the declarant. But the declarations must have been made before the controversy in relation to which they are to be proved arose.”

which is evidently on the petitioner in view of the fact that this is an exclusion proceeding, that John Delaney has met this burden by a fair preponderance of the evidence by his allegations of birth in this country, in accordance with one of the exceptions to the hearsay rule of evidence, which allegations have not been disproved by the respondent, although the respondent conducted extensive investigations in Ireland to prove his birth in that country.

John Delaney remembers that when his father put him to school in Ireland he registered him as a citizen of the United States; and that he attended the national school Shambaley in the County of Cork, and the Carrigaline male National school in the County of Cork, Ireland. He quit school at about fourteen or fifteen years of age, and first went to sea when he was a youngster, as a wiper—about eighteen years or less. John Delaney further stated that when he first returned to the United States on the “John Ludgate” he gave his nationality as an American (page 35); and that when he shipped out of the United States during 1917 or 1918, he gave his nationality as American; also that when he registered for the draft in 1917 he registered as a United States citizen, but was turned down because of flat feet; also, when he registered under the present Selective [37] Service System, he represented himself to be an American citizen by birth.

John Delaney has maintained a residence in the United States for about thirty years, and during this time he has never left the United States for any purpose other than to follow the occupation of a seaman, and the animus reverendi has always been present in his heart and mind.

Generally its is presumed, at least until the contrary appears, that every person is a citizen of the country in which he resides, *Shelton v. Tiffin*, 6 How. (U. S.) 163, 12 L. Ed. 387.

According to his testimony he has:

- (1) Never applied to any American consul for an immigration visa;
- (2) Never paid a head tax at any immigration port of entry;
- (3) Never been excluded from admission to the United States;
- (4) Never been deported from the United States;
- (5) Never been confined in an institution for the treatment of the insane or feeble minded;
- (6) Never been arrested;
- (7) Never applied for admission to the United States for permanent residence as an alien;
- (8) Never been admitted to the United States as an alien for permanent residence;
- (9) Never has had an American or British passport, or a passport of any other country;
- (10) Never has had in his possession any kind of an official paper issued by any country showing his birth place and citizenship, except seaman's discharge papers;
- (11) Never lived in England;
- (12) Never voted in England;

but:

- (13) has voted in New York in 1926 and/or 1927, and in Long Beach, California, in 1941, or at any rate has been registered to vote. [38]

The Government, as is reflected by the record of these proceedings, made extensive investigations, both in this country and in Ireland, to disprove the contention of John Delaney that he was born in Brooklyn, New York, but without success.

Contradictory Statements and/or Untrue Statements, of
John Delaney Considered By the Court:

The court is well aware of the fact that there are contradictory and/or untrue statements in the record which give considerable weight to the contention of the Immigration and Naturalization service that John Delaney is not an American citizen by birth, and which warrant his being excluded from this country, all of which have been considered by the court, but it will not be necessary to refer to all of them.

In the hearing before the Board of Special Inquiry, held at San Pedro, California, (page 3 of the record) petitioner John Delaney stated that the reason he told the authorities of the vessel "Nehian", in November of 1924, that he was a British subject was that they would not have hired an American citizen; and likewise, when asked why he registered as an alien on December 16th, 1940, at Long Beach, California, he stated he could get no record of his birth in Brooklyn, New York, and needed a record to obtain employment.

The court believes that John Delaney has satisfactorily answered the questions as to why he represented himself

to be a British subject in November of 1924, when he shipped on the SS. "Nehian" in 1924; and registered as a friendly alien during World War Two on December 16th, 1940, at Long Beach, California; which events both happened prior to the time he was able to obtain a certified copy of his parent's marriage in Philadelphia, Penna., dated December 1st, 1943, mailed to him from Philadelphia by the Department of Public Health. [39]

Since 1941, John Delaney has consistently maintained his American birth in Brooklyn, New York, as is evidenced by his application for original license (Ex. 5); his Application for identification card (Ex. 6); and his application for extension of route or raise of grade of license (Ex. 7), all attached to the record of hearing before the Board of Special Inquiry held at San Pedro, California, in which he represented himself as having been born in this country.

This court, in addition to the statements made by John Delaney relative to his pedigree, clearly admissible as exceptions to the hearsay rule of evidence, will require no greater documentary evidence of his citizenship than that which was acceptable to the United States Maritime Service when he joined that service. John Delaney, as a second Assistant Engineer on the SS. "Schenectady," went into the war zones to risk his life, or even die for his country, if necessary, all the time firmly believing that he was an American citizen by birth. If John Delaney had been less patriotic and more timid, in other words a slacker, he would not have found himself in his present predicament, or have been incarcerated by the Immigration officials at San Pedro, California, for six weeks practically incommunicado. John Delaney is not a homo sine patria, but a citizen of the United States by jus soli, and

is not subject to exclusion proceedings. His domicile or residence is in the United States of America.

In the case of *People v. Guariglia*, decided by the Kings County Court, New York, on October 1st, 1946, 65 N. Y. Sup. (2d) 96, a seduction case, where the court had for consideration the question of whether or not the statute of limitations of that state ran against the defendant while he was without the State of New York as a member of the United States Army in the European theatre of operation, the Court held that it did on the theory that he continued to be an inhabitant or resident [40] of the State. The court said:

“Applied to the instant case, it is clear that while the defendant was in the armed forces he continued to be both an inhabitant and a resident of the State. Indeed the People stipulated on the trial that at and prior to September 24, 1943, the date of the seduction “the defendant resided in the County of Kings State of New York, where he was domiciled. * * * That from October 15, 1943 to on or about December 15, 1945, continuously, the defendant was without the State of New York as a member of the U. S. Army in the European theatre of operations under the orders of his superior, and that his domicile continued in the State of New York during that period.’

“Even in the absence of such stipulation the decisions hold that a soldier continues to be an inhabitant or resident of the State for the purpose of voting etc. ‘In legal phraseology “residence” is synonymous with “inhabitancy” or “domicile”’, *De Meli v. De Meli*, 120 N. Y. 485, 491, 24 N. E. 996, 998, 17 Am. St. Rep. 652. * * * A soldier in

military service remains an inhabitant of the State.
* * * 15 Am. Jur. 37. '*A seaman on a long voyage and a soldier in actual service, may be respectively inhabitants of a place, though not personally present there for years.*' Sears v. City of Boston, 1 Metc. 250, 42 Mass. 250. (Italics supplied.)

If this theory should be supported by the Circuit Court of Appeals for the Ninth Circuit it would make no difference whether or not John Delaney was, or was not, a native born citizen of the United States by jus soli during the time he was on the SS. "Schenectady", for, in legal contemplation, he never did leave the United States.

The writ of habeas corpus is hereby granted; the petitioner, John Delaney, is ordered released from technical custody, and his bond is ordered exonerated.

Counsel for the petitioner will prepare Findings of Fact and Conclusions of Law, and a judgment, in accordance with this opinion, within ten days, after having presented same to counsel for the respondent herein for approval as to form.

Dated at Los Angeles, Calif., this 21 day of February, 1947.

J. F. T. O'CONNOR

U. S. District Judge

[Endorsed]: Filed Feb. 21, 1947. Edmund L. Smith, Clerk. [41]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter came on regularly to be heard upon the petition of John Delaney, for a Writ of Habeas Corpus to which petition a return thereto was filed by the Department of Justice Immigration and Naturalization Service, Los Angeles, California, District No. 16, denominated respondent through Albert Del Guercio, its district director and upon the traverse of the petitioner to said return and the further supplemental return filed by the respondent before the Honorable J. F. T. O'Connor, district Judge for the District Court of the United States, in and for the Southern District of California, Central Division.

The petitioner being present in person and represented by his Attorney David C. Marcus, Esquire of Los Angeles, California, and the respondent being represented by James M. Carter, Esquire, United States Attorney, Robert Wright, Esquire, Assistant United [42] States Attorney and Bruce G. Barber, Esquire, Chief Adjudications Division United States Immigration and Naturalization Service, all of Los Angeles, California.

That said matter was heard by the above entitled Court on the 14th day of January, 1947; that evidence both oral and documentary was introduced on behalf of the petitioner and respondent, the Court being fully advised by oral argument and briefs submitted by respective counsel, and the cause thereupon having been submitted and the Court having rendered its written opinion granting said Writ of Habeas Corpus and directing counsel for peti-

tioner to prepare Findings of Fact and Conclusions of Law, in accordance with its opinion, it is therefore the Findings of Fact of the Court as follows:

I.

It is true that petitioner John Delaney, in the year 1943 upon entering the service of the United States Maritime Service took oath of allegiance to the United States Government, that while in such service he was paid by the United States Government, through the Treasurer of the United States, in Washington, D. C., that during his entire service of enlistment extending over a period of approximately a year and six months, petitioner was assigned to the S. S. "Schenectady" a tanker owned and operated by Beacon Hill Shipping Co., agents for the United States War Shipping Administration, as engineer; that he was commissioned a Lieutenant in the United States Naval Reserve and that he was ordered to sea by the United States Coast Guard; that penalty for failure to obey orders was Court Martial.

II.

That pursuant to his orders petitioner John Delaney, departed from the United States on June 10, 1944, aboard the S. S. "Schenectady" an armed oil tanker which rendezvoused with the United [43] Fleet upon the high seas supplying it with oil. Petitioner, as a member of the crew of said vessel went to Australia, the Persian Gulf, New Zealand, the Marshall Islands, Curacao, Dutch West Indies, through the Panama Canal, to the Marshall and Admiralty Islands and Ulithi, Caroline Islands and thence returned to San Pedro, California, United States of America, on the 20th day of May, 1945. That petitioner was in battle engagements in the Marshall Islands and

Ulithi and was awarded the Atlantic War Zone Bar, the Mediterranean Middle East War Zone Bar, the Pacific War Zone Bar, and the Merchant Marine Combat Bar.

III.

That it is true that petitioner upon his departure from the United States aboard the S. S. "Schenectady" intended to return and during his entire foreign service upon the high seas served aboard the said S. S. "Schenectady." That it is true that petitioner entered the United States from said vessel on May 20, 1945, returned to his home in Long Beach, California, resumed his residence, and not until May 21, 1945, did he first learn or was advised that the Immigration Office at San Pedro, California, desired that he report to them, which said petitioner in the uniform of an officer in the Merchant Marine did thereupon report to said immigration Office.

IV.

That it is true that petitioner was then and there taken into custody by said Immigration Service, respondent herein, detained, restrained and deprived of his liberty until the issuance by this Court of its Writ of Habeas Corpus.

V.

That it is true that petitioner John Delaney, upon his return to the United States entered or reentered the United States on May 20, 1945.

VI.

That it is true that John Delaney, was born in Brooklyn, [44] New York, on November 14, 1898, to John Delaney, father and Margaret Bridget Whalen, mother.

VII.

That it is true that his father, John Delaney and his mother Margaret Bridget Whalen, were married in Philadelphia, Pennsylvania, on October 22, 1896.

VIII.

That it is true that Delaney's mother died in Brooklyn, New York, a week after the birth of petitioner; that his father then married Mary Grady and returned to Ireland with petitioner as an infant.

IX.

That it is true that petitioner returned and entered the United States at Wilmington, North Carolina on November 14, 1924 and since that time he did not leave or depart from the United States for any foreign port or destination but was continuously employed in the United States, until his departure aboard the S. S. "Schenectady," on June 10, 1944 as aforesaid.

X.

That it is true that petitioner:

- (1) Never applied to any American Consul for an Immigration visa;
- (2) Never paid a head tax at any Immigration port of entry;
- (3) Never has been excluded from admission to the United States;
- (4) Never has been deported from the United States;
- (5) Never has been confined in an institution for the treatment of the insane or feeble minded;
- (6) Never has been arrested;
- (7) Never has applied for admission to the United States for permanent residence as an alien; [45]
- (8) Never has been admitted to the United States as an alien for permanent residence;

- (9) Never has had an American or British passport or a passport of any other country;
- (10) Never has had in his possession any kind of an official paper issued by any country showing his birth place and citizenship, except seaman's discharge papers.
- (11) Never has lived in England.
- (12) Never has voted in England.

XI.

That it is true that petitioner has voted in New York, in 1926 and 1927, and in Long Beach, California, in 1941 and has been a continuous resident of the United States for a period of approximately 30 years.

XII.

That it is true that petitioner registered for the Selective Service Draft in the United States in 1917 and in 1940, claiming American citizenship by birth.

XIII.

That it is true that John Delaney, enlisted in the United States Maritime Service; commissioned a lieutenant in the United States Naval Reserve; directed and ordered to ship aboard a United States registered armed tanker; took oath of allegiance to the United States Government; risked his life for his country and at all times claiming United States citizenship by birth and was accepted for service, by the United States Maritime Service, commissioned as an officer in the Naval Reserve, served aboard United States, registered armed vessel as an American citizen by birth.

XIV.

That it is not true that petitioner was born at Cork, Ireland or is a citizen of Ireland. [46]

XV.

That it is true that petitioner is of good moral character.

That by Reason of the Foregoing Findings of Fact the Court Does Hereby Make and Enter Its Conclusions of Law:

I.

That petitioner herein is an American citizen by birth and has continued to be and now is an American citizen by birth.

II.

That petitioner herein is an American citizen by Jus Soli and is not a citizen of any other country.

III.

That petitioner John Delaney, is illegally and unlawfully detained, confined and restrained of his liberty by the respondent Department of Justice, Immigration and Naturalization Service, at Terminal Island, Los Angeles, California.

IV.

That petitioner is entitled to a Writ of Habeas Corpus, to be released from custody and his bond exonerated.

Let Judgment be entered accordingly.

Dated: This 28 day of May, 1947.

Recd. May 22, 1947.

J. F. T. O'CONNOR

Judge of the U. S. District Court

[Endorsed]: Filed May 28, 1947. Edmund L. Smith,
Clerk. [47]

In the District Court of the United States
in and for the Southern District of California
Central Division

No. 4591-O'C. Civil

In the Matter of the Application of

JOHN DELANEY

For a Writ of Habeas Corpus.

JUDGMENT

The above entitled matter coming on regularly to be heard upon the petition of John Delaney, for a Writ of Habeas Corpus to which petition a return was filed by the Department of Justice Immigration and Naturalization Service, Los Angeles, California, District No. 16, denominated respondent through Albert Del Guercio, its district director and upon the traverse of the petitioner to said return and the further supplemental return filed by the respondent before the Honorable J. F. T. O'Connor, District Judge for the District Court of the United States in and for the Southern District of California, central division.

The petitioner being present in person and represented by his Attorney David C. Marcus, Esquire of Los Angeles, California, and the respondent being represented by James M. Carter, Esquire, United States Attorney, Robert Wright, Esquire, Assistant United States Attorney and Bruce G. Barber, Esquire, Chief Adjudications Division, United States Immigration and Naturalization Service, all [48] of Los Angeles, California.

That said matter was heard by the above entitled Court on the 14 day of January, 1947; that evidence both oral

and documentary was introduced on behalf of the petitioner and respondent, the Court being fully advised by oral argument and briefs submitted by respective counsel, and the cause thereupon having been submitted and the Court having rendered its written opinion granting said Writ of Habeas Corpus and directing counsel for the petitioner to prepare findings of fact and conclusions of law in accordance with its opinion and findings of fact and conclusions of law having been prepared, signed and filed it is therefore the order and judgment of this Court:

- (1) The petitioner John Delaney, is an American citizen by birth and has continued to be and now is an American citizen by birth.
- (2) The petitioner herein is an American citizen by Jus Soli and is not a citizen of any other country.
- (3) The petitioner John Delaney, is illegally and unlawfully detained, confined and restrained of his liberty by the respondent Department of Justice Immigration and Naturalization Service at Terminal Island, Los Angeles, California.
- (4) The petition for Writ of Habeas Corpus is hereby granted, the petitioner is ordered released from custody and his bond exonerated.

Done in open Court, this 28 day of May, 1947.

J. F. T. O'CONNOR
Judge of the U. S. District Court

Judgment entered May 28, 1947. Docketed May 28, 1947. Book C. O. B. 43, page 374. Edmund L. Smith, Clerk, by Francis E. Cross, Deputy.

[Endorsed]: Filed May 28, 1947. Edmund L. Smith, Clerk. [49]

[Title of District Court and Cause]

NOTICE OF APPEAL

To John Delaney, petitioner, and David C. Marcus, his attorney, 206 South Spring Street, Los Angeles, California:

Please take notice that respondent appeals from the entire judgment entered in this cause on May 28, 1947, to the Circuit Court of Appeals, Ninth Circuit.

Dated: August 25, 1947.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

ROBERT E. WRIGHT

Assistant U. S. Attorney

Attorneys for Respondent

ALBERT DEL GUERCIO

District Director, United States Department of Justice,
Immigration and Naturalization Service, District
No. 16

[Endorsed]: Filed; mld. copy to David C. Marcus, atty. for petnr., Aug. 25, 1947. Edmund L. Smith, Clerk. [50]

[Title of District Court and Cause]

STIPULATION AND ORDER FOR TRANSMITTAL
OF ORIGINAL EXHIBITS

It is stipulated between the parties hereto that the original exhibits introduced on the trial of this cause may be transmitted to the Circuit Court of Appeals in lieu of the reproduction of the said exhibits as a part of the printed record on appeal.

Petitioner's Exhibits 1, 2, 3, 4, 5, 6 and 7 are identified and received in evidence on pages 3, 10, 10, 11, 13, 20 and 23 respectively of the reporter's transcript of proceedings at the trial.

Respondent's Exhibits A and B are identified and admitted in evidence at page 52 of the reporter's transcript of proceedings at the trial.

Said exhibits shall be transmitted by the Clerk of this court to the said Circuit Court of Appeals for the Ninth Circuit, with the record on appeal in this cause, and when the appeal in this cause has been heard and determined, said exhibits shall be returned to the Clerk of this court by the Clerk of the Circuit Court of Appeals for the Ninth Circuit.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

ROBERT E. WRIGHT

Assistant U. S. Attorney

Attorneys for Respondent-Appellant

DAVID C. MARCUS

Attorney for Petitioner-Appellee

It Is So Ordered this 24 day of September, 1947.

J. F. T. O'CONNOR

Judge U. S. District Court

[Endorsed]: Filed Sep. 24, 1947. Edmund L. Smith,
Clerk. [51]

[Title of District Court and Cause]

STIPULATION AS TO RECORD

It is stipulated between the parties hereto that the transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above entitled cause, shall include the complete record including, but without limitation of the generality hereof, this stipulation and the stipulation for the transfer of the original exhibits, and including stenographic transcript of proceedings.

Said transcript to be prepared as required by law and the rules of this court and the Federal Rules of Civil Procedure, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit as required by law and said rules.

Dated: September 24, 1947.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

ROBERT E. WRIGHT

Assistant U. S. Attorney

Attorneys for Respondent-Appellant

DAVID C. MARCUS

Attorney for Petitioner-Appellee

[Endorsed]: Filed Sep. 24, 1947. Edmund L. Smith,
Clerk. [52]

[Title of District Court and Cause]

STIPULATION FOR SUBSTITUTION OF PARTY
RESPONDENT

Whereas Albert Del Guercio is no longer District Director, United States Department of Justice, Immigration and Naturalization Service, District No. 16, and said office is now occupied by William A. Carmichael;

It is stipulated that William A. Carmichael, District Director, United States Department of Justice, Immigration and Naturalization Service, District No. 16, may be substituted as party-respondent in this action for Albert Del Guercio, who at the time of the institution and prosecution thereof held the office of said District Director.

Dated: September 26, 1947.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

ROBERT E. WRIGHT

Assistant U. S. Attorney

Attorneys for Respondent-Appellant

DAVID C. MARCUS

Attorney for Petitioner-Appellee

It is so ordered this 26 day of Sept., 1947.

J. F. T. O'CONNOR

Judge, U. S. Dist. Ct.

[Endorsed]: Filed Sep. 26, 1947. Edmund L. Smith,
Clerk. [53]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 53, inclusive, contain full, true and correct copies of Petition for a Writ of Habeas Corpus; Return to Writ of Habeas Corpus; Traverse; Opinion of the Court Granting Writ of Habeas Corpus; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Stipulation and Order for transmittal of Original Exhibits; Stipulation as to Record and Stipulation and Order Substituting Party Respondent which, together with Original Petitioner's Exhibits 1 to 7, inclusive; Original Respondent's Exhibits A and B and copy of Reporter's Transcript of Proceedings held on January 14, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 30 day of September, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause]

Honorable J. F. T. O'Connor, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, January 14, 1947

Appearances:

For the Petitioner: David C. Marcus, Esq.

For the Government: Robert E. Wright, Esq., Assistant United States Attorney.

Los Angeles, California, Tuesday, January 14, 1947,
10:00 a. m.

JOHN DELANEY,

the petitioner, called as a witness in his own behalf,
being first duly sworn, testified as follows:

The Clerk: Your full name is John Delaney?

The Witness: Yes.

Direct Examination.

By Mr. Marcus:

Q. Mr. Delaney, what is your business or occupation?

A. Marine engineer.

Q. By whom are you employed at the present time?

A. The United States Government.

Q. Where at?

A. Terminal Island.

Q. What kind of work are you doing now?

A. Supervising the installation of engines and machinery in ships.

Q. Of what country are you a citizen?

A. The United States.

(Testimony of John Delaney)

Q. When and where were you born?

A. In the United States.

Q. Where were you born?

A. Brooklyn, New York.

Q. What date? [2*]

A. The 14th of November, 1898.

Q. Were your father and mother married in the United States? A. Yes, sir.

Q. What was your mother's name?

A. Bridget Whalen.

The Court: Your parents were married where?

A. Philadelphia.

Q. By Mr. Marcus: I have the marriage certificate here. What was your afther's name?

A. Michael Delaney.

Q. I show you a marriage certificate dated October 22, 1896. The certificate is dated December 1, 1943, but the date of the marriage is indicated as on October 22, 1896, license No. 88243, issued to M. Delaney and Bridget Whalen, both of Ireland, showing the marriage of M. Delaney and Bridget Whalen on October 22, 1896, by Rev. John Scully, 317 Willings Abbey, Roman Catholic Church.

I offer that in evidence.

Mr. Wright: I object to it upon the ground that it is already in the record, as a part of the proceedings.

The Court: It may be received.

The Clerk: This will be Petitioner's No. 1 in evidence.

(The document referred to was marked Petitioner's Exhibit No. 1 and was received in evidence.) [3]

*Page number appearing at top of page of original Reporter's Transcript.

(Testimony of John Delaney)

Q. By Mr. Marcus: When did you first depart from the United States, Mr. Delaney?

A. My father took me when I was a child.

Q. How old were you, approximately?

A. About a year old.

Q. Where did you go? A. To Ireland.

Q. Did your mother go with you?

A. No, my mother died.

Q. When?

A. In childbirth.

Q. Your father remarried? A. Yes, sir.

Q. Before departing for Ireland? A. Yes, sir.

Q. How long did you remain in Ireland?

A. Until I was about 15 or 16 years old.

Q. Did you then return to the United States?

A. Yes, sir.

Q. What year was that, approximately?

A. Oh, I would say it was around '12 or '13; something like that. I am not sure of the year.

Q. How did you come to the United States at that time?

A. I ran away from home. I got a job on a ship, and came out here as a wiper in the engine room. [4]

Q. How long did you remain in the United States at that time? A. Until 1924.

Q. Did you reside continuously in the United States at that time? A. Yes, sir.

Q. What happened in 1924?

A. I went on a ship again. I shipped out in 1924 on an American ship. We went to Europe, and I lost my ship in Europe, and I came back then in November, 1924. We left in August, 1924.

(Testimony of John Delaney)

Q. You attended school in Ireland, did you, during the period that you resided there? A. Yes, sir.

Q. Do you remember the name of the ship on which you entered the United States in 1924?

A. The Ninian.

Q. That is spelled N-i-n-i-a-n?

A. Yes.

Q. You resided continuously in the United States since that entry in 1924? A. Yes, sir.

Q. You worked for the government in the Geodetic Survey? A. Yes.

Q. What year. [5]

A. 1924. I worked about a year, I think, with the United States Geodetic Survey Service in Florida.

Q. You continued to reside in the United States continuously since 1924? A. Yes, sir.

Q. Until when? A. Until 1943.

Q. What did you do in 1943?

A. I went in the Naval Reserve. They were calling all engineers up. The Army called me. Also, I preferred to go into the Naval Reserve.

Q. Did you enter the Naval Reserve?

A. Yes, sir, the United States Merchants Marine Reserve. It is a branch of the United States Naval Reserve.

Mr. Wright: Objected to, your Honor, as a conclusion of law.

Mr. Marcus: That is not law. It is a fact.

Mr. Wright: That it is a branch of the United States Naval Reserve is a matter of law.

The Court: Lay a further foundation.

(Testimony of John Delaney)

Q. By Mr. Marcus: My Delaney, tell us where you went in 1943.

A. I went to the South Pacific.

Q. Not out of the United States—how did you enter the Service? [6]

A. The government called all engineers that had licenses.

Q. You had a license at that time? A. Yes.

Q. Where did you go?

A. I went to San Pedro. I saw the Coast Guard officer there. The Coast Guard officer signed me up and sent me to the Officers' School in San Francisco.

Q. In 1943? A. In 1943.

Q. Did you attend the Officers' School there?

A. Yes, sir.

Q. Were you commissioned at that time?

A. When I finished my training, sir, after I passed my examination.

Q. What were you commissioned?

A. A lieutenant.

Q. In what?

A. In the United States Merchant Marine Reserve.

Q. Then did you resign from that service?

A. I was discharged from that service.

Q. Then did you join the United States Naval Reserve?

A. That was the United States Naval Reserve. We had to join that in order to get on these ships. They had to have certain government men on each oil tanker to take charge of [7] the men.

Mr. Wright: Your Honor, I submit that there should be a document. The man said he was commissioned.

(Testimony of John Delaney)

The Court: Yes. Have you any document?

Mr. Marcus: That is, his release from the Maritime Service?

Mr. Wright: Yes. What was his commission in the Navy, or Naval Reserve?

The Court: Lieutenant in the Marine Reserve.

Mr. Wright: I understood him to say Naval Reserve, your Honor.

Mr. Marcus: Here is his commission, your Honor.

Q. I will ask you whether or not this is your commission in the United States Maritime Reserve as a lieutenant? A. Yes.

The Court: When was that issued?

Mr. Marcus: It was issued March 6th, 1944. John Delaney. Service No. 4433-00243. Issuing officer S. Patton.

Mr. Wright: Your Honor, I did not object when he asked him if this was his commission, but having his individual identification card is not a commission in anything.

Mr. Marcus: Let the court decide that. I will offer this in evidence at this time, with the privilege of withdrawing it.

Q. Mr. Delaney, were you issued that card at the time [8] you became a lieutenant in the Service?

A. After we were sworn in, sir.

Q. Is that what they gave you? A. Yes.

The Court: Did you receive any other commission?

The Witness: I received my commission with this paper, to relieve me from active duty in the United States Maritime Service.

The Court: What is the date of it?

(Testimony of John Delaney)

Mr. Marcus: United States Maritime Service. Release from active duty. This is to certify that John Delaney, 4433-00243, has been released from active duty as Lieut. on March 25, 1944, at San Francisco, Calif. and placed in an inactive status in the United States Maritime Service. Signed Lieut. S. U. Patton.

Is this the document you received prior to the time you were granted the identification card? A. Yes.

The Court: What is the date of it?

Mr. Marcus: March 2, 1944.

Mr. Wright: We have no objection.

The Court: In evidence. It may be withdrawn by the substitution of a photostatic copy.

Mr. Marcus: We offer this in evidence.

Mr. Wright: No objection to either of these. Of course [9] we are not conceding by that that they are competent or relevant.

The Clerk: These two documents are Petitioner's Exhibits 2 and 3, respectively, in evidence.

(The documents referred to were marked Petitioner's Exhibits 2 and 3, respectively, and were received in evidence.)

Q. By Mr. Marcus: I show you a card issued by the Captain of the Port at Los Angeles, to John Delaney, on December 27, 1943, indicating citizenship U. S. A., and ask you whether or not that card applies to you. A. Yes, sir.

The Court: Read it into the record.

Mr. Marcus: (Reading:) Identification only—not a pass.... Issued by Captain of Port Los Angeles. Name Delaney, John. Occupation, Engineer Officer. Sponsor,

(Testimony of John Delaney)

Various S. S. Co's. Validated—United States Coast Guard. R. D. Dyas C. Sp Genuine only if watermarked. U. S. C. G. No. 601693.

On the reverse it indicates as follows: Issued December 27, 1943. Expires when revoked. Citizenship USA. Place of birth, New York, U. S. A. Age 44. Height 5-6. Weight 150. Color eyes, blue. Color hair, blond. Bearing fingerprint, index finger, right hand. Signed John Delaney.

I offer this card in evidence.

Mr. Wright: I object to it as incompetent and irrelevant, your Honor. I have no objection to it being considered by the court.

The Court: It will be admitted in evidence. It may be withdrawn by the substitution of a photostatic copy.

The Clerk: Petitioner's Exhibit No. 4.

(The document referred to was marked Petitioner's Exhibit 4 and was received in evidence.)

Q. By Mr. Marcus: Mr. Delaney, subsequent to your commission, as a lieutenant, did you receive from the War Shipping Administration directions for you to proceed to San Francisco and report to the commanding officer of the United States Maritime Service?

A. Yes, sir.

Q. I will ask you whether or not these are the instructions that you received on March 2, 1944?

A. Yes, sir.

Mr. Marcus: May this be offered in evidence, letter dated March 2, 1944, from War Shipping Administration, directed to Delaney, John, Lieutenant U. S. Mari-

(Testimony of John Delaney)

time Service, from enrolling officer, Wilmington, California?

The Court: Read it into the record.

Mr. Marcus: (Reading): War Shipping Administration. Division of Training. United States Maritime Service.

March 2, 1944.

From: Enrolling Officer, Wilmington, California. [11]

To: Delaney, John Lt. USMS.

Subject: Orders; travel.

Reference: REO Telephone conversation Feb. 29, 1944.

1. Proceed immediately to San Francisco, California and report to the Superintendent or Commanding Officer of the U. S. Maritime Service Turbo-Electric School for training.

2. The travel necessary to the execution hereof is required by the public interest.

3. You will depart from Los Angeles, Calif. via S. P. R. R. at 1700 this date.

4. Following transportation is issued to you:

T. R. 51,476 & 51,477.

Meal Tickets 58991 & 58992 (Emergent 58993)

Geo. A. Coverdale, WSA U. S. M. S.

Enrolling Officer.

Q. Did you report pursuant to that order and direction? A. Yes, sir.

Q. And did you enroll and take courses provided under these instructions? A. Yes, sir.

(Testimony of John Delaney)

The Court: The document will be received and may be withdrawn upon the substitution of a photostatic copy.

The Clerk: That will be Petitioner's Exhibit No. 5 in evidence. [12]

(The document referred to was marked Petitioner's Exhibit 5 and was received in evidence.)

Q. By Mr. Marcus: Subsequent to your graduation from the school you stated that you were commissioned, according to this record, as a lieutenant?

A. Yes, sir.

Q. Did you receive any instructions then from the United States Maritime Service? A. Yes, sir.

Q. Or Naval Reserve, Maritime Service?

A. Yes, sir.

Q. What were those instructions?

A. To proceed to San Pedro.

Q. Did you proceed? A. Yes, sir.

Q. What year? A. That was 1944.

Q. What did you do then?

A. Then I was assigned to a ship.

Q. As what?

A. As second assistant engineer.

Q. What ship were you assigned to on your first voyage?

A. The De Golia, Edwin B. De Golia.

Q. The record indicates that you shipped January 5, 1944, from San Pedro, California, is that correct? [13]

A. Yes.

Q. Where did you go?

A. We went to Seattle.

(Testimony of John Delaney)

Q. From there where did you go?

A. Came back to San Pedro.

Q. Is that the only trip that you made in that vessel?

A. That is the only trip, yes. I was assigned then to go overseas.

Q. On June 6, 1944, the record indicates you shipped aboard the S. S. Schenectady, is that correct?

A. Yes.

Q. Where did you go?

A. Went to the Pacific and Atlantic.

Q. Under what orders did you ship on the S. S. Schenectady?

A. Under United States Reserve orders from the Coast Guard. The Coast Guard has jurisdiction over all the men.

Q. You shipped foreign on the S. S. Schenectady? What was your first trip?

A. The first trip on the S. S. Schenectady was foreign ports in the South Pacific and Atlantic.

Q. Where did you go first?

A. We went straight to Australia on that ship.

Q. What kind of a vessel was it?

A. Oil tanker. [14]

Q. Were you loaded at the time you departed from the United States? A. Yes, sir.

Q. Where did you receive your orders from to depart? A. From the Navy, sir.

Q. The United States Navy?

A. The Admiralty, yes.

Q. How do you know it was from the Admiralty?

A. We were under sealed orders all the time, attached to the American Fleet.

(Testimony of John Delaney)

Q. Where? A. Pacific Islands.

Q. You stated you first went to Australia?

A. Yes.

Q. What port did you visit in Australia?

A. New Zealand. We first went down to the Persian Gulf.

Q. What did you do there?

A. Loaded with oil there, and brought it back to Australia.

Q. Then what did you do?

A. Then we went back again and loaded oil there, and went back to the Marshall Islands, and the Admiralty Islands. We were supplying the Fleet with oil.

Q. How long were you in the South Pacific? [15]

A. One year and a month, I think.

Q. During that period of time from whom were you receiving your orders?

A. From the Fleet.

Q. Were you in contact with the Fleet?

A. Yes, sir, they were giving us our instructions.

Q. They were giving you your instructions?

A. Yes.

Q. As to what to do? A. Yes, sir.

Q. Where did you supply oil?

A. We supplied oil to the Fleet. We were six months with the American Fleet. Then they transferred to the English Fleet.

Q. Where did you go with the American Fleet?

A. We went to the Pacific.

Q. You were in the Pacific, were you not?

A. Yes, sir.

(Testimony of John Delaney)

Q. Were you in any engagements in the Pacific?

A. In the Marshall Islands, the Admiralty Islands, and Ulithy.

Q. Were you in those three engagements?

A. No, we got to the Admiralty Islands when the engagement was on.

Q. What engagements were you in? [16]

A. Marshall Islands and Ulithy engagements.

Q. Did you carry any guns on your ship?

A. Yes.

Q. Of what character?

A. 6-inch and 8 anti-aircraft guns.

Q. Did you have any Naval personnel on your ship?

A. Yes, sir.

Q. Who were those Navy personnel?

A. The gunnery men; the men who handled the guns. They were trained for that.

Q. Members of the United States Navy?

A. Yes.

Q. How about the captain?

A. The captain, he belonged to the Reserve, sir.

Q. On your various trips to the Persian Gulf and return to the Fleet, under whose instructions were you acting?

A. Under Fleet's orders, sir.

Q. Did you actually supply oil to the Fleet on the high seas?

A. No, we supplied the oil to the mother ship, the store ship.

Q. On the high seas?

A. In port; wherever we could find her; wherever she would meet us.

(Testimony of John Delaney)

Q. All those instructions, you stated, were given to you [17] from the United States Navy?

A. Yes, sir. They are all sealed orders; under sealed orders at all times, of the United States Navy.

Q. How do you know they were from the United States Navy?

A. The Captain told us when we got out so many degrees, where we had to go.

Q. You stated you were then assigned to the British Navy? A. Yes.

Q. Where was that?

A. We were sent to the British Fleet in the Pacific also.

Q. How long were you with the British Fleet?

A. Six months.

Q. What were you doing?

A. Supplying oil there.

Q. During your service on the S. S. Schenectady, with the British Fleet, were you acting under instructions? A. From the British Admiralty.

Q. Did you at any time serve aboard any other vessel besides the S. S. Schenectady?

A. No, sir.

Q. On this voyage? A. No, sir. [18]

Q. I will show you your certificates, issued by the Maritime Service—

Mr. Wright: Can't we stipulate to them, counsel?

Mr. Marcus: Yes. This is his combat certificate.

Mr. Wright: The words relate to the Pacific War Zone Bar and Merchant Marine Combat Bars. You don't need to identify these. You may introduce them. We make no objection to them.

(Testimony of John Delaney)

The Court: They may be received, subject to the same order of the court, that they may be withdrawn upon the substitution of photostatic copies.

Mr. Marcus: (Reading:) War Shipping Administration. This is to certify that Lieut. John Delaney has been awarded the Pacific War Zone Bar confirming active service with the United States Merchant Marine in that war area. Signed E. S. Land, Administrator. War Shipping Administration. This is to certify that Lieut. John Delaney has been awarded the Merchant Marine Combat Bar confirming active service with the United States Merchant Marine in a ship which was engaged in direct enemy action. E. S. Land, administrator.

War Shipping Administration. This is to certify that Lieut. John Delaney has been awarded the Mediterranean Middle East War Zone Bar, confirming active service with the United States Merchant Marine in that war area. E. S. Land, Administrator.

War Shipping Administration. This is to certify that [19] Lieut. John Delaney has been awarded the Atlantic War Zone Bar confirming active service with the United States Merchant Marine in that war area. E. S. Land, Administrator.

I offer these as one exhibit.

The Clerk: They will be Petitioner's Exhibit No. 6 in evidence.

(The documents referred to were marked Petitioner's Exhibit No. 6 and were received in evidence.)

(Testimony of John Delaney)

Q. By Mr. Marcus: Did you go to the Atlantic Ocean at any time on the Schenectady?

A. No, sir.

Q. You stated you were gone approximately one year and a few days, from the United States?

A. We left—

Q. In January?

A. No, we left on June, 1944. We got back June or July, I believe, 1945.

Q. You were aboard this tanker during all the time?

A. Yes.

Q. Tell us what the S. S. Schenectady is. What is its register?

A. All ships were taken over by the United States Government, all oil tankers, for supply to the Fleet, so, therefore, you were in the Navy area at all times. She was an oil tanker built in San Francisco. [20]

Mr. Wright: I object to that, your Honor, as not being the best evidence, and relates the conclusion of the witness.

The Court: Yes, that may go out.

Q. By Mr. Marcus: This was an American registered vessel, was it not? A. Yes, sir.

Q. During your service on this American registered vessel you were on board the S. S. Schenectady during all these periods you have indicated?

A. Yes, sir.

Q. You never set aboard any other vessel?

A. No, sir.

Mr. Wright: Can't we introduce that record in evidence, counsel? I think it will cover his record. It is his continuous service record.

Mr. Marcus: Shall I read it, your Honor?

The Court: Yes.

Mr. Marcus: (Reading:) Issued by Bureau of Marine Inspection and Navigation.

Name of Seaman, in full, John Delaney.

Statement of age, date of birth 14 November, 1898.

Statement of personal description.

Height, Feet, 5 Inches, 6.

Color of Eyes, Blue, Hair, grey.

Complexion, Fair. [21]

Continuous Discharge Book No. 233972.

Place of birth, New York

Grade 2nd Ass't. Engr., Ocean, any H. P.

The Witness: Any horsepower.

Mr. Marcus: No. A 3330.

Home address of seaman, 725 E. 6th Street, Long Beach 2, California.

Signature of issuing officer P. L. Woodruff, Acting Merchant Marine Inspector, Port of Los Angeles, Calif.

Signature of seaman, John Delaney.

Certification of Discharge.

Name of ship, official number and class.

1. Edwin De Golia, Tanker.

Date and place of engagement, Jan. 5, 1944, San Pedro.

Rating, 2nd. Ass't. Eng.

Description of Voyage, Coast-wise.

Date and place of discharge, Feb. 10, 1944. San Pedro.

Signature of (1) Master; and (2) Shipping Commissioner and official stamp. D. A. Wishmoff.

(Testimony of John Delaney)

2. S. S. Schenectady, 242620. Tanker.

Date and place of engagement, June 6, 1944. San Pedro.

Rating, 2nd. Ass't. Eng.

Description of voyage, Foreign.

Date and place of discharge, May 23, 1945. San Pedro.

Signed W. G. Friar. [22]

I offer this book in evidence.

The Court: In evidence.

The Clerk: Petitioner's Exhibit No. 7.

(The document referred to was marked Petitioner's Exhibit No. 7 and was received in evidence.)

Mr. Marcus: Attached to this book appears the following, which we will ask be included in the same Exhibit:

United States Coast Guard. Certificate of Discharge.
John Delaney. Serial No. G 2622521.

Issued by W. G. Friar.

I hereby certify that the above entries were made by me and are correct and that the signatures hereto were witnessed by me.

Dated this 5th day of June, 1944. W. G. Friar,
Master of Vessel.

Name of seaman, John Delaney.

Citizenship, USA. Certificate of Identification No. ZA330.

Rating, 2nd Ast. Eng.

Date of Shipment, May 16, 1944.

Place of Shipment, San Pedro, Calif.

(Testimony of John Delaney)

Date of Discharge, June 5th, 1944?

Place of Discharge, San Pedro, Calif.

Name of Ship, Schenectady.

Official No. 242620.

Class of Vessel, Steam. [23]

Nature of Voyage, Coastwise.

Passport Division, Customhouse, San Pedro, California.

Received from John Delaney, Date Dec. 27, 1943. One Dollar (\$1.00) with application for seaman's passport.

F. H. Rock, Agent, Department of State.

Note: Passports are issued from Washington, D. C., by the Department of State, about three months after application has been filed. You will receive official notification by mail when your passport has been issued. Bring the notification and this receipt *in person* to obtain passport.

Put that with it, please. I don't know that it has any bearing on it, but I want it in.

Q. How long had you lived in San Pedro, California, Mr. Delaney, prior to 1945?

A. Since 1937.

Q. You had been continuously residing at least in the United States since 1924, as you stated before?

A. Yes.

Q. And in Long Beach since 1937, is that correct?

A. Yes, sir.

Q. What is your address there?

A. I had various addresses there. I moved around to different places.

(Testimony of John Delaney)

Q. The address indicated in this book is 725 East 6th Street, Long Beach? [24] A. Yes.

Q. Was that your residence at the time you shipped aboard the S. S. Schenectady? A. Yes.

Q. When you departed did you leave any property in the United States? A. I left my car.

Q. And your personal effects? A. Yes, sir.

Q. In the United States? A. Yes, sir.

Q. Did you ever vote in the United States?

A. Yes.

Q. When?

A. I voted in Long Beach the last election, but I was away the election before. We were at sea the last election. We couldn't vote.

Q. But you did vote? A. Yes, sir.

Q. For the President of the United States?

A. Yes.

Q. You returned in May, did you,—May or June?

A. Yes, sir.

Q. The record indicates that you returned on the S. S. Schenectady. [25]

A. May 6th., I think it was.

Q. May 23, 1945. Did you get off ship?

A. Yes, sir.

Q. On the 23rd? A. Yes, sir.

Q. Did you go to your home? A. Yes, sir.

Q. Did you stay all night at your home?

A. Yes, sir.

Q. That was in Long Beach? A. Yes, sir.

Q. In the United States?

A. Yes, sir.

(Testimony of John Delaney)

Q. Did you return to the ship the next day?

A. The ship was out in the harbor, sir. We couldn't get any place to dock, so the ship was in the harbor, and I called up the shipping office, at San Pedro, where the ship was. They told me I had to report to the Immigration Station.

Q. When was that? A. The following day.

Q. After you had arrived in the United States, and had resided here overnight? A. Yes, sir.

Q. At your home in Long Beach?

A. Yes, sir. [26]

Q. Then did you go to the United States Immigration Office? A. Yes, sir.

Q. Were you in uniform at that time?

A. Yes, sir.

Q. What happened?

A. They detained me there. They wouldn't let me out.

Q. They took you into custody? A. Yes, sir.

Q. At that time did your uniform indicate your rank as lieutenant? A. Yes, sir.

Q. Then what was done with you?

A. I was there six weeks. I wouldn't be allowed to communicate with no one.

Q. You were where six weeks?

A. In prison.

Q. In other words, you had been in the United States one day. Were you in jail? A. In prison, yes.

Q. You were finally released on a writ of habeas corpus? A. Yes.

Q. You had some hearings down at San Pedro?

A. Yes. [27]

(Testimony of John Delaney)

Q. You requested an attorney to represent you?

A. Yes, sir.

Q. What were you advised?

A. I was refused.

Q. At any time during those proceedings have you ever been permitted the right to have counsel? May it be stipulated that he was refused the right to counsel? The record so indicates it.

Mr. Barber: That is not a fact, your Honor, when you put it that way. The law does not authorize his having counsel during the hearing.

Mr. Marcus: That's for the court to determine. I am going to the unfairness of the hearing.

Mr. Barber: I think we have several citations from United States vs. Ju Toy—

Mr. Marcus: I am not arguing the matter. I asked, would you stipulate he was refused the right of counsel?

The Court: Counsel has modified his suggestion. He was about to state it when you interrupted.

Mr. Wright: I would say that the law did not authorize petitioner to have an attorney present during the Board of Special Inquiry hearing. The law does authorize him to have an attorney on appeal. You were his attorney on appeal. He had consulted with you, and also with another attorney at the conclusion of the Board's hearing. [28]

Mr. Marcus: You will stipulate that he was denied the right to counsel at the proceedings.

The Court: At the hearing.

Mr. Marcus: At the hearing.

The Court: Of the Board of Special Inquiry?

(Testimony of John Delaney)

Mr. Marcus: Of the Board of Special Inquiry.

Q. By Mr. Marcus: Approximately how many hearings did you have, Mr. Delaney?

A. About six hearings.

Q. Before I pass up your foreign voyages, did you ship on any other ships besides the S. S. Schenectady and De Golia?

A. No, sir.

Q. Was there a hospital ship you shipped on?

A. Yes, there was a hospital ship. It was the hospital ship Republic.

Q. When was this?

A. I think it was—that was in 1945, December, 1945.

Q. Wasn't that before you shipped on the Schenectady?

A. No, that was after. I was supervising work on the hospital ship at that time; repair work.

Q. For the government?

A. For the government, yes.

Q. Was that after you returned on the Schenectady?

A. After I returned from the Pacific.

Q. Aren't you a bit confused, Mr. Delaney? Didn't they [29] take you into custody the day they returned?

A. Yes, sir.

Q. You couldn't have been on the Republic, could you?

A. After I got released from prison the Army called me back. The A. T. S. called me to attend and supervise on the hospital ship that got damaged at sea. That was why I was assigned to that ship.

Q. Did you ship out?

A. No, sir, only on the steam trial.

(Testimony of John Delaney)

Q. What do you mean by that?

A. Up the coast, San Francisco and Seattle.

Q. Who gave you your orders in connection with that?

A. The A. T. S.,—Army Transport Service.

Q. You took that vessel to sea too?

A. Yes, sir.

Q. Was that torpedoed?

A. I believe after, yes.

Q. When you entered the United States—

The Court: Let us clear up the attorneyship matter. We should clarify that a bit. The government says he was permitted to have counsel, but not at the hearing. Will you clear that up, please?

Q. By Mr. Marcus: Mr. Delaney, the record of the hearing indicates that on May 21, 1945 you had a first hearing before the Board of Special Inquiry, at San Pedro, California? [30] A. Yes, sir.

Q. It also indicates here that the date of your arrival was May 20th, aboard the S. S. Schenectady, is that correct? A. That is correct.

Q. Were you at that time advised that you had a right to counsel, or an attorney at those proceedings?

A. No, sir.

Mr. Marcus: Will you stipulate with me, counsel, that the record indicates he was not advised of his right to counsel at this proceeding?

Mr. Wright: On page 17 of the typewritten transcript, he was not advised of his right to have counsel, because the Board as constituted would not permit him to have counsel, but the court said: You have the right to appeal. He was then advised that he had a

(Testimony of John Delaney)

right to counsel on appeal. I think if you ask the petitioner, he will admit that he consulted with an attorney in San Pedro prior to the time you came into the case.

Mr. Marcus: I am simply asking whether you are willing to stipulate that he was not advised of his right to counsel at the first hearing, on May 21st.

The Court: Counsel answered him by saying it is the position of the government that he was not entitled to one. You are now asking him to stipulate that he was entitled to an attorney, and did not receive one. [31]

Mr. Marcus: My theory is that he was entitled under the constitutional rights to counsel.

The Court: All I am interested in is that you ask the witness when he first contacted counsel.

Q. By Mr. Marcus: Did you have, or advise with an attorney? A. Yes, sir.

Q. Wait a minute—on the date of the first hearing, May 21, 1945? A. No, sir.

Q. You did not advise with an attorney?

A. No, sir.

Q. On that date were you taken into custody?

A. Yes, sir.

Q. Were you lodged in prison in San Pedro?

A. That's right.

Q. How long were you there before you could contact an attorney? A. Around two weeks.

Q. Had you during that period of time requested permission to have counsel?

A. Yes, sir, and I was refused.

Q. Who did you ask?

A. I asked the Chairman of the Board.

(Testimony of John Delaney)

Q. What was his name? [32]

A. Mr. Prooney, I believe, or Cooney.

Mr. Wright: Cooney.

Q. By Mr. Marcus: Do you know Mr. Bennett?

A. Yes, sir.

Q. At any time was he Chairman of the Board?

A. No, sir.

Q. Did you ever ask him for an attorney?

A. Yes, sir.

The Court: What did he say?

The Witness: He said no, that I was not allowed to have an attorney at the hearing.

Q. By Mr. Marcus: Were you advised at the first hearing that you had a right to consult with an attorney at any time?

A. I asked if I was allowed to have one, and they said no.

The Court: You have not answered counsel's question. Read the question.

(Question read by the reporter.)

Q. By Mr. Marcus: At the first hearing were you advised that you had a right to consult with an attorney?

A. No, sir.

Q. The record indicates that a further hearing was held on May 22, 1945, before the same Board. Did you have an attorney represent you at that time? [33]

A. No, sir.

Q. Were you permitted to advise with an attorney at that time? A. No, sir.

Q. The record further indicates that on May 23 you had a further hearing at 1:30 in the afternoon. Were

(Testimony of John Delaney)

you at that time advised that you had a right to confer with an attorney? A. No, sir.

Q. Or had you conferred with an attorney?

A. No, sir.

Q. Did you ask permission from the members of the Board to confer with an attorney? A. Yes, sir.

Q. Were you granted such permission?

A. I was refused, sir.

Q. How long subsequent to this date did you confer with an attorney?

A. When I was in this prison, sir, I had to get word by a friend to consult an attorney. I wouldn't be allowed to use the telephone to call an attorney.

Q. Did you consult with an attorney from Long Beach? A. Yes.

Q. How long after you had the first three hearings I have indicated?

A. That was, I think, about the fourth hearing. [35]

Q. Did you ask permission to have that attorney present at this fourth hearing?

A. No, sir, I asked permission if I could get bail. They told me that I could not get bail to get out; that I would not be released. I did not plead for an attorney at the hearing, because they told me I could not have an attorney at the hearing.

Q. You asked permission to be released from prison on bail? A. Yes, sir.

Q. Who did you ask that of?

A. I asked Mr. Bennett.

Q. The Chairman of the Board? A. Yes, sir.

Q. Was he the Chairman at that time?

A. No, Mr. Cooney was the Chairman of the Board.

(Testimony of John Delaney)

Q. You asked Mr. Bennett? A. Yes.

Q. What did he state to you?

A. He refused.

Mr. Marcus: Will you stipulate to Mr. Bennett's official position at San Pedro?

Mr. Wright: Yes, Mr. Bennett was the officer in charge at San Pedro of the Immigration and Naturalization Service, under the District Director at Los Angeles. [36]

Q. By Mr. Marcus: After you conferred with this attorney in Long Beach, where did this conversation take place?—Did he come to jail to talk to you?

A. Yes, sir.

The Court: What is his name?

The Witness: I don't know his name.

The Court: Have you got it?

Mr. Wright: I think he is referring to Attorney Leonard Di Micelli, at 1008 South Pacific Avenue, San Pedro, California.

Q. By Mr. Marcus: Was any conversation held with Attorney Di Micelli in your presence, with the Immigration officer?

A. Mr. Di Micelli came in to see me, with permission of Mr. Bennett. Mr. Cooney was at the hearing, and told them no attorney was allowed to be at the hearing, so I never saw the attorney any more.

Q. Was that the extent of your advise from counsel?

A. Yes.

Q. You subsequently communicated with another attorney? A. Yes.

Q. Who was that? A. Mr. Marcus.

(Testimony of John Delaney)

Q. I came down to visit you at San Pedro?

A. Yes. [37]

Q. In my presence do you remember a conversation that I had with Mr. Cooney and Mr. Bennett regarding your representation at these hearings, and my request to be permitted to attend those hearings?

A. He refused.

Q. Do you remember if I asked him? A. Yes.

Q. What did he advise me?

A. He said no, no attorney was allowed at the hearings.

Q. Do you remember my likewise requesting that you be permitted to post bond to be released from prison?

A. Yes, sir.

Q. What was the answer at that time? Did he permit you, or grant you permission to post bond for your release from prison? A. Yes, sir.

Q. He did?

A. No, he didn't sir. I think it was you that did it. I am not sure of that.

Q. Do you remember my asking Mr. Bennett and Mr. Cooney that you wanted to be released on bond?

A. Yes.

Q. And he replied he would not permit your release on bond? A. That's right, sir. [38]

Q. Do you remember that subsequently a writ of habeas corpus was issued out of this court?

A. Yes, sir.

Q. For your release on bond? A. Yes, sir.

Q. Do you remember my taking that writ of habeas corpus to Mr. Cooney and Mr. Bennett at Terminal Island? A. Yes, sir.

(Testimony of John Delaney)

Q. In your presence they refused to recognize the writ of habeas corpus?

A. That's right.

Q. And refused your release?

A. That's right, sir.

The Court: Is that in the record?

Mr. Marcus: Yes, your Honor, they had a hearing on that.

Mr. Barber: I think we had a discussion on that. Mr. Marcus indicated that there was some confusion at the Port. Subsequently we had an investigation. That was a matter that would come within the jurisdiction of the Administrative Department. His statement that he was refused release on a writ is incorrect, because the man was released on the writ.

The Court: That is very important to this court, if a writ issued out of the United States Court is going to be repudiated by an officer of the government.

Mr. Wright: Wasn't he produced under the writ? [39]

The Court: I want to be clear on what happened down there. Here is a very serious statement in the record, that an officer of the Immigration Department repudiated a writ of the United States District Court. That is in the record here.

Mr. Wright: In view of the court's interest in that I suggest that the witness testify to the facts. He

(Testimony of John Delaney)

testified to the conclusion, that it was refused. Let us get the facts.

The Court: I want to have the record develop the facts.

Q. By Mr. Marcus: Do you remember my coming to San Pedro with the original writ of habeas corpus?

A. Yes, sir.

Q. And in your presence delivering it to the officer in charge? A. Yes, sir.

Q. And what was done with that writ?

The Court: What was said at that time?

The Witness: He would not recognize the writ.

The Court: Is that what he said?

The Witness: Yes, sir.

The Court: Who said that?

The Witness: Mr. Cooney. I believe it was Mr. Cooney, and Mr. Bennett.

The Court: Did they both say it?

The Witness: Yes, the fact of the matter is that when Mr. Marcus came to the office the second time with the writ, I [40] believe—

The Court: Don't go to the second time. Let us get through with the first time first.

The Witness: When Mr. Marcus came to the office he called for me, and they brought me down there, and

(Testimony of John Delaney)

Mr. Bennett was there and a guard was there at the time, and they refused then.

The Court: Was Mr. Cooney there?

The Witness: Mr. Cooney, yes.

The Court: And Mr. Bennett?

The Witness: Mr. Bennett, yes.

The Court: The first time?

The Witness: Yes.

The Court: Present then were Mr. Cooney, Mr. Bennett, a guard, and Mr. Marcus and yourself?

The Witness: Yes, sir.

The Court: Proceed from there.

The Witness: They refused.

The Court: Not that they refused. What was said? Who spoke? You don't have to give the exact words, but as nearly as you can.

The Witness: Mr. Marcus said he presented a writ of habeas corpus.

The Court: The original writ? What did he do with it? Did he hand it to anybody? [41]

The Witness: Yes, sir.

The Court: Who did he hand it to?

The Witness: Mr. Bennett.

The Court: What did he say when he handed it to him?

The Witness: He would not recognize it.

(Testimony of John Delaney)

The Court: What did Mr. Marcus say when he handed it to Mr. Bennett, if you remember? You don't have to give the exact words.

The Witness: When Mr. Marcus handed it to Mr. Bennett he refused to accept it.

The Court: That is what he said?

The Witness: Yes, sir.

The Court: What was said next? Did he say anything else? Did he give any reason for refusing to accept it?

The Witness: No, sir, he did not. So Mr. Marcus left then, and he came down the next day, I believe, again. I know Mr. Marcus left at that time, and went back.

The Court: Where did you go?

The Witness: I was taken back up to my dormitory, and the next afternoon Mr. Bennett sent a guard for me, that I was to be released on a writ. That was the next day.

The Court: Were you released?

The Witness: Yes, sir.

The Court: Was Mr. Marcus down there then?

The Witness: No, sir. [42]

The Court: Anything further will be developed later.
A recess until 2:00.

(Whereupon, a recess was taken until 2:00 o'clock p. m.) [43]

Los Angeles, California, January 14, 1947, 2:00 o'clock
p. m.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 4591 Civil in the matter of the application of John Delaney for a writ of habeas corpus and for further court hearing.

The Court: Are both sides ready?

Mr. Marcus: Ready.

The Court: Proceed.

Mr. Marcus: Mr. Delaney, take the stand.

JOHN DELANEY,

the witness on the stand at the time of adjournment, being previously duly sworn, resumed the stand and testified further as follows:

Direct Examination.

By Mr. Marcus:

Q. Mr. Delaney, when you called this first attorney to talk to you, will you tell the court how you were permitted to talk with this attorney?

A. Well, Mr. Bennett assigned a guard with me to speak to the attorney; and, therefore, the attorney would not have nothing to do with the case, except he would speak to me alone.

Q. Were you permitted at that time to talk to your attorney alone? [44]

A. No, sir.

Q. Was there a guard present at all times?

A. Yes, sir.

Q. During your conversation with this attorney?

A. Yes, sir.

(Testimony of John Delaney)

Q. Were you permitted to consult with your attorney at that time without the presence of a guard?

A. No, sir.

Q. Who was the guard?

A. Oh, I don't know his name, sir.

Q. What was his position?

The Court: A guard.

The Witness: Well, he was a guard.

Q. By Mr. Marcus: Was he in the service of the Immigration Department?

A. Oh, yes, sir. Yes.

Q. An immigration officer?

A. Immigration officer, yes, sir.

Q. Subsequent to that time when you employed the services of Mr. Marcus to represent you, approximately how many times did he come to visit you?

A. About three times, sir.

Q. Were you at any time of those times permitted to converse or consult with him without the presence of a guard?

A. No, sir. [45]

Q. Was there a guard of the Immigration Service always present during all of the conversations?

A. Yes, sir.

Q. You testified this morning concerning the instance when the writ was brought, the writ of habeas corpus was brought, to the office at San Pedro where you were detained in custody.

Do you remember the circumstances at that time?

A. Yes, sir.

Q. Do you remember what day it was?

Can we stipulate that it was the third day of July that the writ was first presented?

(Testimony of John Delaney)

Mr. Bruce Barber (Immigration and Naturalization Department): Your Honor, I don't think any stipulation is needed there. That matter was taken up with Judge McCormick, and his release was effective on July 5. But that is a matter of record before Judge McCormick.

Mr. Marcus: All right.

Q. Do you remember on July 3rd, on or about July 3rd, that I first appeared there with the writ of habeas corpus?

A. Yes, sir.

Q. And is that the instance that you related this morning, that they refused to recognize the writ?

A. Yes, sir.

Q. Your release was subsequently secured on July 5th, [46] was it not?

A. That's right, sir.

Q. And you remained in custody two days subsequent to the date that the writ was issued?

A. That is right, sir.

Q. Subsequent to your release there were several hearings at the Immigration Office in San Pedro, were there?

A. Yes, sir.

Q. Do you know approximately how many?

A. I would judge around six times, sir.

Q. On any of those occasions were you permitted to have an attorney present?

A. No, sir.

Q. And were you residing in the United States at that time?

A. Yes, sir.

Q. Did you at any time make a request for permission to have an attorney?

A. Yes, sir.

Q. Of your own choosing present at these proceedings?

A. Yes, sir.

(Testimony of John Delaney)

Q. Of whom did you make the request?

A. To the chairman of the board.

Q. Who was that?

A. Mr. Cooney and also Mr. Bennett. [47]

Q. What was his reply?

A. They refused. They told me I was not allowed any attorney.

Q. Mr. Delaney, did you ever take the oath of allegiance to the government of the United States?

A. Yes, sir.

Q. When did you do that? A. In 1943.

Q. Under what circumstances? How did you happen to take the oath of allegiance?

A. In joining the reserves, sir, the United States Maritime Reserve.

Q. Now, while you were in the service of the government of the United States, by whom were you paid?

A. We were paid by the United States government. Our checks come from Washington.

Q. Do you remember how these checks were made out, by whom?

A. United States Treasury.

Q. Was that during your entire service with the Maritime Service? A. Yes, sir.

Q. Covering what period of time?

A. Well, I would judge about a year and six months.

Q. Now, in these various trips that you made did you [48] yourself voluntarily make any of the trips from the United States? A. No, sir.

Q. How did you ship?

A. I was assigned to that ship, sir.

(Testimony of John Delaney)

Q. Under what. How were you signed?

A. As engineer of the ship.

Q. No, what, but how were you assigned?

A. Well, the Coast Guard assigned me to the ship to take the ship out.

Q. Did you receive any orders to go out?

A. Yes, sir.

Q. Where did these orders come from?

A. They came from the United States Coast Guard.

Q. Do you know of your own knowledge at that time whether or not the United States Coast Guard was a part of the United States Navy? A. Yes, sir.

Q. Was it? A. Yes, sir.

Q. Do you know what the penalty would be, of your own knowledge, in case you refused to ship when you received your orders? A. Yes, sir.

Q. What? [49]

A. We would be court-martialed in time of war.

Mr. Marcus: You may cross examine.

Mr. Wright: No cross examination, your Honor.

The Court: That is all.

Mr. Marcus: Step down.

(Witness excused.)

Mr. Marcus: Petitioner rests.

Let me suggest this, your Honor: If the court would care to hear any further testimony regarding the question of this writ and this presentation and the refusal of the right of counsel, I can take the stand and testify to those facts.

The Court: I do not care for any.

Mr. Marcus: Very well. Petitioner rests.

Mr. Wright: This is the crew list covering the vessel Schenectady.

The Court: Was there a bond in this case?

Mr. Marcus: Yes, there is, your Honor.

The Court: How much?

Mr. Marcus: \$500. No objection.

Mr. Wright: May this be marked Respondent's Exhibit A?

The Court: Respondent's Exhibit A for identification.

The Court: In the file is the record of the hearing before the Board of Special Inquiry held in San Pedro, California. That is marked Exhibit A. Do I understand that is part of the testimony in this court? [50]

Mr. Wright: Do you know, Mr. Barber, about Exhibit A?

Mr. Barber: That was attached to the supplemental return, your Honor.

The Court: I want to be sure what the record is in the case.

Mr. Barber: I believe, your Honor, that is the first exhibit attached, and that was—

Mr. Wright (Interposing): That is the original return, isn't it?

Mr. Barber: Yes. Now, there will be a duplicate of this complete hearing in the central office file which contains the complete proceedings, including the decisions of the Board of Immigration Appeals and the Commissioner. But at that time the case had not yet reached the Attorney-General, as I recall.

Mr. Wright: Didn't we attach that as an exhibit to the supplemental return?

Mr. Barber: Yes. That whole hearing was attached to the supplemental.

Mr. Marcus: I understand there is another exhibit here of the entire proceedings.

Mr. Wright: Of the entire proceedings, yes. Do you have those, Judge?

The Court: No. Do you mean the final hearing?

Mr. Wright: Yes, your Honor. This is the complete file [51] on the entire proceedings, and it is the big volume of papers here that is attached to the supplemental return.

The Court: Including the Exhibit A that is in the file to which I have called your attention?

Mr. Wright: Yes. That includes this, doesn't it?

Mr. Barber: Yes.

The Court: All right.

Mr. Barber: There is an index on that, your Honor. Those files are rather difficult to get to. We prepared an index on the top referring to the red pencil figures, the lower right-hand corner.

The Court: Yes. The pages are indicated in red. This is part of the evidence to be considered in this case, is it?

Mr. Wright: Yes, your Honor.

The Court: All right, proceed.

Mr. Wright: The respondent now offers in evidence the certified copy of the crew list covering the departure of the vessel Schenectady on June 9, 1944, to which counsel has stated he has no objection.

The Court: The crew list of June 9, 1944?

Mr. Wright: As Exhibit A, Respondent's Exhibit A.

The Court: In evidence, Mr. Cross. You will mark this as Respondent's Exhibit B in the file.

The Clerk: This will be Respondent's Exhibit B.

The Court: Let me see Respondent's Exhibit A, please. [52]

(Document handed to the court.)

Mr. Wright: You are marking the return, Mr. Cross, but I guess it is all right.

The Court: Isn't that part of it?

Mr. Wright: Yes, the whole file.

The Clerk: Yes.

The Court: What is the point with reference to Exhibit A, the list? Is the point there that it does not show the petitioner is a member of that ship's crew?

Mr. Wright: It shows, your Honor, that the vessel was operated by a commercial company, that Deconhil Shipping Company as an agent of the Maritime Commission—the War Shipping Administration, I should say—and on line 21 appears the name of the petitioner here.

Mr. Marcus: Do I understand that that Crew list—

The Court (Interposing): Line 21 has the name of John Delaney. This is a very poor copy.

Mr. Wright: Line 21?

The Court: 21. Yes, line 21 has the name of John Delaney, No. 233972; birth place: New York.

It has a date on it in that column "Citizen or subject of" but what the date is is indistinct. "Age, 45."

Mr. Wright: Under the column headed "Citizen or subject of"

The Court: Yes. [53]

Mr. Wright: Yes. Above that date is "U. S. A." on line 15.

The Court: Well, then, there is another line—

Mr. Wright (Interposing): Line 19.

The Court: Yes. What is that?

Mr. Wright: There is a percentage mark, apparently a typographical error.

The Court: That is what I wanted to clear up. "Age, 45; five feet six. Description: Complexion . . ." and after the name "John Delaney" is "Lieutenant, Hair, Brown," I guess. It has a ditto above it. "Capacity, second assistant engineer."

Mr. Wright: Engineer.

The Court: "Name and address of next of kin," referring to John Delaney again, it is very indistinct.

Mr. Wright: "Co."

The Court: What?

Mr. Wright: "Co" for cousin.

The Court: "Co" and another letter.

Mr. Wright: "R. McArdle."

The Court: After the "Co" I see another letter.

Mr. Wright: "Co:"

The Court: "R. McArdle," M-c-A-r-d-l-e.

Now, is that 725 East Sixth Street, Long Beach, California? [54]

Mr. Wright: Yes.

The Court: "Owned and operated by Deconhil Shipping Co., agents for War Shipping Administration. Bound from Los Angeles, California, June 9th, 1944, to Foreign," without any other designation. "The following composed the crew: . . ."

Then as we have stated already on line 21 is the name of the petitioner in this case.

I assume that is the petitioner. Is there any dispute about it?

Mr. Marcus: There is no question about that.

The Court: No dispute about that?

Mr. Wright: No question about that, your Honor.

The Court: Is there, counsel?

Mr. Marcus: No, none.

The Court: All right, proceed, gentlemen.

Mr. Marcus: May it be stipulated, counsel, that Mr. Delaney has no criminal record? You have the FBI report.

Mr. Barber: There is not in the deportation hearing.

The Court: Probably the government could not go that far, but it could go far enough to say that the report they have does not show any. But that may not be accurate.

Mr. Barber: Yes, I have reviewed the record; and so far as the record shows there is no criminal record.

The Court: That is as far as you could ask the govern- [55] ment to go. All right.

Mr. Wright: Respondent rests, your Honor.

The Court: All right.

Mr. Marcus: No rebuttal.

The Court: All right. The matter is under submission, gentlemen.

Does the government desire to furnish the court some authorities with reference to the new point developed today on the statute of limitations?

Mr. Wright: I think that would be in order, your Honor; and I should be very happy to do that.

Perhaps in view of the fact that counsel held that one out until today and sprung it in court, it might save any further confusion if counsel would file a brief and counsel for the petitioner his final brief, and we could answer that. And I think then we would have before the court the complete statement of the position of both sides here.

Mr. Marcus: Will you read that first statement of counsel?

(Record read by the reporter.)

Mr. Marcus: Your Honor, this brief prepared and filed on behalf of the Immigration Department was done

by Mr. Barber of the Immigration Department. In answer to that insinuating remark, I want counsel to know that Mr. Barber and I conversed not today but approximately 10 days ago and we [56] discussed both of these cases in his office. It was not sprung today, and I gave him the citation and left them there at his office.

Mr. Wright: This is the first I have heard of it, your Honor. Of course, the United States Attorney is of record here, and when the matter comes up in court I know nothing about it until it is, as I say, sprung here for the first time so far as I have any information.

The Court: Well, the record is clear on that. Many times counsel find a case at the last minute or even after a case is under submission, and it is proper to send a copy of it to opposing counsel and a copy of it to the court.

Mr. Wright: I do not want to be understood to be insinuating anything.

The Court: There was not any insinuation in it.

Mr. Wright: I want to say expressly that I have felt the court would have a better picture if he had two briefs here.

The Court: I remember in the opinion I prepared in the Chaplin case with reference to the municipal judge in Beverly Hills, and planning to deliver the opinion on Monday morning I read all the briefs of counsel; and in researching the matter on Sunday I found a decision that all counsel had overlooked that was very important in the case.

I had no time to give it to either the government or [57] the other side. Of course, I put it in my opinion. But it just came down on Friday, the Friday prior to the Monday.

I think that is a good suggestion. It is an important case. Whenever we have a case involving the liberty of an individual, there is nothing that should be guarded more carefully by the courts.

How much time? You are very familiar with this case. Mr. Marcus, how much time do you want?

Mr. Marcus: Would 10 days be too much, your Honor?

The Court: I think we can get it cleared up. Let me look at my calendar and see if that runs into too many Saturdays or holidays.

January 22nd, the government to January 29th, and if Mr. Marcus desires to make a reply, February 4th.

It will be submitted, gentlemen. Court is in recess.

Mr. Marcus: Your Honor, may I ask the court's indulgence for a moment? I will say it this way, not anticipating the court's opinion in the matter, but assuming that it may be or is adverse to the petitioner here, may we have a stay of execution on it so that we could perfect our record in the event it is?

The Court: Yes, 10 days.

Mr. Marcus: Very well.

The Court: Court is in recess.

(Whereupon, at 3:30 o'clock p. m., the hearing in the above-entitled matter closed.)

[Endorsed]: Filed Sep. 24, 1947. Edmund L. Smith, Clerk. [58]

[Endorsed]: No. 11748. United States Circuit Court of Appeals for the Ninth Circuit. William A. Carmichael, District Director, United States Department of Justice, Immigration and Naturalization Service, District No. 16, Appellant, vs. John Delaney, Appellee. Transcript of Record, Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed October 3, 1947.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11748

WILLIAM A. CARMICHAEL, District Director, etc.,
Appellant,

v.

JOHN DELANEY,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON APPEAL

Appellant designates the following point on which he
intends to rely on appeal in this case:

The determination of the Board of Special Inquiry affirmed by the Board of Immigration Appeals, is not open to review by the United States District Court on a Writ of Habeas Corpus.

JAMES M. CARTER

U. S. Attorney

RONALD WALKER

Assistant U. S. Attorney

ROBERT E. WRIGHT

Assistant U. S. Attorney

Attorneys for Appellant

Received a copy October 9, 1947. David C. Marcus,
Attorney for Appellee.

[Endorsed]: Filed Oct. 10, 1947. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause]

STIPULATION

It is stipulated that none of the exhibits introduced by either party at the trial need be reproduced and printed as a part of the record, and the attorneys representing the parties hereto join in the request that all the exhibits, viz.: petitioner's Exhibits 1, 2, 3, 4, 5, 6 and 7, and respondent's Exhibits A and B, may be considered in their original form.

JAMES M. CARTER

U. S. Attorney

RONALD WALKER

Assistant U. S. Attorney

ROBERT E. WRIGHT

Assistant U. S. Attorney

Attorneys for Appellant

DAVID C. MARCUS

Attorney for Appellee

So Ordered:

FRANCIS A. GARRECHT

Senior United States Circuit Judge

[Endorsed]: Filed Nov. 25, 1947. Paul P. O'Brien,
Clerk.